

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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BONNIE MARCUS and ROMAN	:	CIVIL ACTION NO. 07-2075
WYPART,	:	
Plaintiffs	:	
	:	
v.	:	Philadelphia, Pennsylvania
	:	November 5, 2009
PQ CORPORATION,	:	10:12 o'clock a.m.
Defendant	:	
. . . . .	:	

CIVIL JURY TRIAL - DAY 4  
BEFORE THE HONORABLE JOHN P. FULLAM  
UNITED STATES DISTRICT COURT JUDGE

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APPEARANCES:

For the Plaintiff:	KATIE R. EYER, ESQUIRE SCOTT B. GOLDSHAW, ESQUIRE Salmanson Goldshaw, P.C. Two Penn Center 1500 J.F.K. Boulevard Suite 1230 Philadelphia, PA 19102
For the Defendant:	PETER J. ENNIS, ESQUIRE ELIZABETH A. MALLOY, ESQUIRE Buchanan Ingersoll & Rooney, PC One Oxford Centre 301 Grant Street 20th Floor Pittsburgh, PA 15219-1410

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1 (The following occurred in open court at 10:12  
2 o'clock a.m.)

3 THE CLERK: All rise.

4 THE COURT: Good morning.

5 ALL: Good morning, your Honor.

6 THE COURT: Be seated, please. Are we ready to  
7 proceed?

8 MS. EYER: We are, your Honor. At this time, the  
9 plaintiff calls Dr. Stephanie Thomas to the stand.

10 STEPHANIE THOMAS, Plaintiff's Witness, Sworn.

11 THE CLERK: Please state your name and spell your  
12 last name for the record, please.

13 THE WITNESS: Stephanie Thomas, T-H-O-M-A-S.

14 THE COURT: Stephanie with a ph?

15 THE WITNESS: Yes, sir.

16 DIRECT EXAMINATION

17 BY MS. EYER:

18 Q Good morning, Dr. Thomas.

19 A Good morning.

20 Q Could you please state your employer for the record,  
21 please?

22 A Yes, I'm employed by Minimax Consulting.

23 Q And what is your position with Minimax?

24 A I am the director of the Equal Employment Advisory and  
25 Litigation Support Division.

Thomas - Direct

3

1 Q And what is it that you do for a living? How would you  
2 characterize your profession?

3 A I specialize in applied economics and statistics.

4 Q Have you come to court today prepared to give an expert  
5 statistical opinion on whether the 2005 lay-off decisions at  
6 PQ Corporation were related to age?

7 A Yes, I have.

8 Q Before you share those opinions, I would like to ask you  
9 about your qualifications.

10 THE COURT: Just go ahead and do it. Don't tell her  
11 what you'd like to do.

12 Q Could you please tell the jury what is your educational  
13 background?

14 A I have a Bachelor's Degree in Economics from Elmyra  
15 College. I have a Masters Degree and a Ph.D. in Economics  
16 from the New School for Social Research in New York City.

17 Q And did your course of Ph.D. study involve statistics?

18 A Yes, it did.

19 Q You stated earlier that you are a statistician and  
20 economist. How long have been employed in that capacity?

21 A A little over ten years.

22 Q And what type of work do you perform as a statistician?

23 A All kinds of consulting work, anything that calls for the  
24 application of statistics to real world problems, we work on.

25 Q And that would include equal employment opportunity

Thomas - Direct

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1 matters, is that correct?

2 A That's correct.

3 Q Could you please give me a brief overview of your  
4 employment history before you came to Minimax Consulting?

5 A Certainly. From August of 2003 until September 1st of  
6 this year, I was employed by LECG, as a principal. I was  
7 doing the same kind of work, applied economics and  
8 statistics. From June, 1999 to August of 2003, I was  
9 employed by the Center for Forensic Economic Studies in  
10 Philadelphia, again, as an applied economic and statistical  
11 consultant. And from September, 1997 until June of 1999, I  
12 was on the faculty of Arts & Sciences at New York University.

13 Q And that would be as a professor, is that correct?

14 A That's correct.

15 Q Have you testified in court relative to the issues you  
16 are here to testify about today, in other cases?

17 A Yes, I have.

18 Q What courts?

19 A Various federal and state courts, New Jersey,  
20 Pennsylvania, Washington, D.C., Virginia, Kentucky.

21 Q Dr. Thomas, is your firm retained by both plaintiffs and  
22 defense counsel?

23 A Yes, we are.

24 Q And would you be able to estimate roughly what proportion  
25 of your work is defense side work versus plaintiffs side

Thomas - Direct

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1 word?

2 A It really varies, depending on the current project load,  
3 but I would say somewhere between 60/40 to 70/30 on the  
4 defense side.

5 MS. EYER: At this time, I would like to offer Dr.  
6 Stephanie Thomas as an expert in the field of statistics.

7 MR. ENNIS: No objection.

8 BY MS. EYER:

9 Q Dr. Thomas, did you undertake a statistical analysis of  
10 the reduction in force decisions in this case?

11 A Yes, I did.

12 Q And could you, please, briefly summarize for the jury  
13 what you found?

14 A Yes. I found that there is a surplus of older workers  
15 selected for RIF, even when we control for the explanations  
16 offered by PQ Corp.

17 Q And were the results that you found statistically  
18 significant?

19 A Yes, they were.

20 Q Could you, please, briefly explain, for the jury, what it  
21 means in lay terms to be statistically significant?

22 A Sure. Basically, what we're trying to do with statistics  
23 is we're trying to figure out how likely something is to  
24 occur. And the rule of thumb that statisticians use is  
25 something called two units of standard deviation. So, if an

Thomas - Direct

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1 outcome is less than 5 percent, which is equivalent to two  
2 units of standard deviation, if it's less than 5 percent  
3 likely to occur, we say that that result is statistically  
4 significant.

5 Q And am I correct that a statistically significant result  
6 is one you would not expect to see by chance?

7 A Correct.

8 Q Dr. Thomas, what information did you rely on in preparing  
9 your analysis here today?

10 A I reviewed the Complaint, the defendant's second  
11 supplemental responses to plaintiff, Bonnie Marcus' first set  
12 of interrogatories, defendant's third supplemental response  
13 to plaintiff, Bonnie Marcus' first set of interrogatories,  
14 defendant's second supplemental responses to plaintiff, Roman  
15 Wypart's first set of interrogatories, Defendant's amended  
16 responses to plaintiff, Roman Wypart's second set of  
17 interrogatories. Two documents relating to the CD program  
18 allocation budgets, those would be Bates PQBM-000212 to 215.  
19 And PQBM-000233 to 236. I also reviewed Plaintiff's Exhibit  
20 P-51 and P-52. I reviewed certain pages of the October 10th  
21 deposition of Mr. Neil Miller. And I was provided with a  
22 data file containing demographic information relating to the  
23 PQ work force, as well as whether the employee was selected  
24 for RIF.

25 Q So, was the majority of information that you considered

Thomas - Direct

7

1 information that was provided by PQ?

2 A That's correct, yes, it was.

3 MS. EYER: Your Honor, at this time, I would request  
4 permission for the witness to approach the easel?

5 THE COURT: For heaven's sake, of course.

6 THE WITNESS: Thank you, sir.

7 Q Dr. Thomas, could you first, please explain to the jury  
8 what you found looking at R&D as a whole, without considering  
9 the explanations that PQ has offered for plaintiff's  
10 terminations?

11 A Yes. When we look at the research and development or R&D  
12 work force, there were 56 individuals in that work force.  
13 And of those 56 individuals, 17 of them were age 55 and  
14 older. Now, within R&D, there were eight people selected for  
15 the reduction in force and all eight of those people were age  
16 55 and older.

17 So, what we can do is, we can statistically  
18 calculate the number of older people, meaning 55 and above  
19 and younger people, under 55, we would expect to see selected  
20 for the RIF. And what we see here is that all eight of the  
21 RIFs were age 55-plus, but not the entire population is age  
22 55 and above. So, we would expect some of those RIFs to be  
23 under age 55 and what we actually find is that there were 5.6  
24 older people that were RIF-ed, more than what we would  
25 expect.

Thomas - Direct

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1 And that's equivalent to 4.30 units of standard deviation.

2 And remember, the rule of thumb here is any standard  
3 deviation over two is considered to be substantially  
4 significant.

5 Q Dr. Thomas, what is the likelihood that you would see  
6 that standard deviation if the lay-off decisions in this case  
7 were unrelated to age?

8 A The odds of that would be one in 58,507.

9 Q Dr. Thomas, what test did you rely on in arriving at this  
10 conclusion?

11 A This test was based on Fisher's Exact Test.

12 Q And did you rely on a similar tests in performing your  
13 other analysis, which we'll get to in just a moment?

14 A Yes, I did.

15 Q And what test would that be?

16 A That would be the Mantel Haenszel Chi Square Test.

17 Q And what the sample size that you used for this analysis?

18 A For all of my analysis the sample size was 56.

19 Q Where your analysis found statistically significant  
20 results, would that be accounting for the sample size?

21 A Yes, it would be.

22 Q So, to put it in language we can all understand, the size  
23 of your sample doesn't make your analysis unreliable, is that  
24 correct?

25 A That's correct.



Thomas - Direct

9

1 Q You performed a number of other analysis relating to R&D  
2 as well, correct?

3 A That's correct.

4 Q Could you please explain for the jury why you conducted  
5 those other analysis?

6 A I conducted the other analysis to control for the  
7 explanations that PQ offered, surrounding the decisions to  
8 reduce people as part of the reduction and force.

9 Q And could you please explain, just briefly, what it means  
10 to control for a particular explanation?

11 A Sure. What that means is we're building that into the  
12 analysis. We're not relying on pure chance. We're  
13 incorporating into our study and our calculations, outside  
14 factors, these explanations that were offered by PQ.

15 Q So, once you've controlled for a factor, would any  
16 results that you see in terms of a surplus of age, be already  
17 having accounted for that factor, is that right?

18 A Yes. If the analysis controls for that factor, the  
19 results incorporate that factor.

20 Q And they are after you've already considered that factor,  
21 is that correct?

22 A That's correct.

23 Q Dr. Thomas, what was the first explanation that you  
24 controlled for?

25 A The first explanation was whether or not somebody was a

Thomas - Direct

10

1 member of a CD group and I reviewed some documentation about  
2 CD group membership and there was some conflict in the  
3 documentation as to whether or not Dr. Lau (ph) should be  
4 included in the CD group or excluded from the CD group. So,  
5 I ran the analysis both ways. If we include Lau -- if we  
6 include Lau in the CD group, we find a surplus of 4.7 older  
7 workers. That means 4.7 more older workers than what we  
8 would expect to see were actually laid off. In units of  
9 standard deviation, that's equivalent to 3.76 units. Again,  
10 that's a statistically significant result.

11 Q And what is the likelihood that you would see that result  
12 if they lay-offs in this case were un-related to age?

13 A The odds there are one in 5,884.

14 Q And you also conducted an analysis with Lau not in the  
15 group, is that correct?

16 A That's correct. If we include Lau in the non-CD group  
17 portion of R&D, we repeat the analysis, we'd see that there  
18 were 4.3 older workers more than what we would expect laid  
19 off. That's equivalent to 3.65 units of standard deviation.  
20 Again, it's a statistically significant result and the  
21 likelihood of that occurring, the odds are one in 3,812.

22 Q Dr. Thomas, in conducting your analysis, what information  
23 did you use to determine who the members of the CD group  
24 were?

25 A Documentation provided by PQ.

Thomas - Direct

11

1 Q And the version of the tests that you performed without  
2 Lau in the group, what percentage were the individuals  
3 assigned to the CD group, who you -- were listed and who were  
4 included in the analysis?

5 A I'm not sure I understand the question.

6 Q For the portion of your analysis you conducted where Lau  
7 was not in the CD group, were all of the members of the CD  
8 group assigned 100 percent to that group?

9 A Yes.

10 Q So, you would effectively control for 100 percent  
11 assignment to that group, as well, through that analysis?

12 A That's correct.

13 Q What was the next explanation that you controlled for Dr.  
14 Thomas?

15 A The next explanation that was offered was whether or not  
16 somebody had a majority of their funding coming through a  
17 project that was terminated. Again, we have the same 56  
18 people in the population. Of those 56, 17 are age 55 and  
19 above. We have the same eight individuals RIF-ed, all of  
20 whom are over age 55. When we run this analysis, we have  
21 five older workers more than what we would expect to see in  
22 RIF. That's equivalent to 4.06 units of standard deviation,  
23 again, a statistically significant result.

24 Q And Dr. Thomas, when you say terminated projects, are you  
25 referring there specifically to CD projects?

Thomas - Direct

12

1 A Yes.

2 Q Corporate Development projects, is that correct?

3 A Correct, yes.

4 Q And what is the likelihood that you would see the 4.06  
5 standard deviations in the absence of a consideration of age?

6 A The odds here are one in 20,368.

7 Q And you conducted this analysis two different ways, is  
8 that correct?

9 A Yes. There were two differing documents provided by PQ  
10 about what projects were terminated. This analysis here is  
11 based on the list that was given in PQBM-000235. There was a  
12 different array of projects listed in PQBM-000215. So,  
13 again, using the second set of information, we still see a  
14 surplus of 5.0 older workers. There were five more laid off  
15 then we would expect. The standard deviations here are 3.96,  
16 again, significant.

17 Q And what would be the odds that you would see that  
18 result, if the lay-off decisions were un-related to age?

19 A The odds here are one in 13,336.

20 Q And Dr. Thomas, in conducting both of these analysis, did  
21 you rely on information provided by PQ to determine what  
22 projects continued and who was assigned to those projects?

23 A Yes.

24 Q Dr. Thomas, what was the next explanation that you  
25 controlled for?

Thomas - Direct

13

1 THE COURT: We learned her name a long time ago.

2 MS. EYER: Thank you, your Honor.

3 THE WITNESS: The next analysis was whether or not  
4 you had any funding, at all, coming to the Corporate  
5 Development group, the CD group. Again, the same 56 people,  
6 17 are age 55 and above. We have the same eight RIFs, all of  
7 whom are older. And when we repeat the analysis here,  
8 controlling for whether or not a person received any funding  
9 from the CD group, we have a surplus of 5.3 older workers,  
10 meaning 5.3 more than what we would expect to see. That's  
11 equivalent to 4.04 units of standard deviation.

12 Q And what is the likelihood that you would see absent  
13 consideration of age?

14 A The odds there are one in 18,699.

15 Q What was the next explanation that you controlled for,  
16 Dr. Thomas and feel free to flip that if you need more room  
17 on that.

18 A Here, we control for whether a person received any  
19 funding via the CD group. The next analysis controls for  
20 whether or not somebody had 100 percent of their funding from  
21 the CD group. Again, it's the same 56 people, the same eight  
22 RIFs. When we do this analysis controlling for 100 percent  
23 funding, we have a surplus of 5.3. Again, there's 5.3 older  
24 workers more than what we would expect to see. The standard  
25 deviation here is 3.97 units, again, that's statistically

Thomas - Direct

14

1 significant.

2 Q And again, what would be the likelihood of seeing that  
3 result be absent consideration of age?

4 A The odds here are one in 13,907.

5 Q In determining how and what portion people were funded  
6 via the Corporate Development program, what information did  
7 you rely on?

8 A That was the supplemental response Number 23.

9 Q So, that would be information that was provided by PQ, is  
10 that correct?

11 A That's correct.

12 Q Dr. Thomas, you can resume the stand, at this time. Why  
13 did you control for the specific factors that you just  
14 identified?

15 A They were the explanations that were offered by PQ in the  
16 material that was provided to me. When we do these kinds of  
17 analysis, we want to try to mirror the process that actually  
18 happened and we want to incorporate all of the explanations  
19 and the factors that we used.

20 Q And did you control for all of the reasons articulated by  
21 PQ for the plaintiff's terminations in particular?

22 A Yes.

23 Q At this time, I would like to direct your attention to  
24 P-233. I believe Mr. Goldshaw will get you that binder in  
25 just a moment.

Thomas - Direct

15

1 A Thank you.

2 Q And the specific exhibits that I'd like you to take a  
3 look at are 233 to 238. Once you've reviewed those, I'll  
4 give you a couple of additional numbers.

5 (Pause.)

6 A Yes.

7 Q Could I also direct your attention to 240 through 242?

8 A Yes, ma'am.

9 Q Do you recognize these charts and tables as documents  
10 that were prepared by you in connection with the analysis  
11 that you just testified to?

12 A Yes, I do.

13 MS. EYER: I hereby move the admission of P-233  
14 through P-238 and P-240 through P-242?

15 MR. ENNIS: Your Honor, we object for the reasons  
16 previously described.

17 THE COURT: You can make them part of the record.  
18 I'll rule on their use later.

19 BY MS. EYER:

20 Q Dr. Thomas, in your best professional opinion, are the  
21 results that you have described here today, consistent with  
22 the defendant's position that the 2005 RIF decisions at PQ  
23 were the result of an age-neutral process?

24 A No. My analysis would support the hypothesis that the  
25 process was not age neutral.

Thomas - Direct

16

1 Q And Dr. Thomas, the conclusions that you've expressed  
2 here today, do you hold those conclusions to a reasonable  
3 degree of professional certainty?

4 A Yes, I do.

5 Q Thank you.

6 THE COURT: Any questions?

7 MR. ENNIS: Yes, your Honor.

8 CROSS-EXAMINATION

9 BY MR. ENNIS:

10 Q Dr. Thomas, will you agree that what you were doing was  
11 looking at the statistics to "infer possible discrimination?"

12 A Correct.

13 Q And you agree that statistics can never be used to solely  
14 prove discrimination?

15 A That's my understanding.

16 Q And that's because you have to look at the actual reasons  
17 given and the evidence for those reasons for each individual  
18 decision, isn't that right?

19 A You would certainly want to include that information. As  
20 to whether or not you'd need to under the laws, that's beyond  
21 the scope of my expertise.

22 Q Okay. And what you did was compare the number and ages  
23 of people in the work force to the number of people who were  
24 removed from the work force?

25 A Correct.



1 Q Okay, and then you tested whether the difference in  
2 outcomes observed ruled out chance?

3 A We tested to see whether or not the results differed from  
4 what we would expect under an age-neutral process, not  
5 chance.

6 Q Not chance and to rule out chance, the pool, the number  
7 of people that you are looking at initially, have to be  
8 similarly situated, wouldn't you agree?

9 A It depends on how you define similarly situated. You  
10 would need to compare people who had the same likelihood of  
11 being selected for RIF.

12 Q Okay, let's use that definition, the same likelihood of  
13 being chosen for the RIF. And what sort of factors would you  
14 look to, to see whether someone had the same likelihood?

15 A Well, those were the factors that I controlled for in my  
16 analysis. Things like whether or not you worked on a  
17 terminated project, whether or not you had funding through  
18 the CD group, whether or not you were considered to be a CD  
19 group member by PQ.

20 Q Okay.

21 A Those kinds of factors.

22 Q And I'm sorry, Colleen, I should have asked you to do  
23 this before. I'm going to put up some documents here.

24 (Pause.)

25 THE COURT: Why are you making her do all the work?

Thomas - Cross

18

1 MR. ENNIS: I'm sure she's much better than I am.

2 (Pause.)

3 Q And just to be clear, the reason you have to have  
4 employees who are similarly situated, is so that everyone can  
5 have the same chance of being let go?

6 A Well, you want to try to compare people who are in the  
7 same positions. If the -- the explanation is that people  
8 were let go based on whether or not they worked on terminated  
9 projects, it wouldn't make sense to include people in the  
10 analysis who had no connection to the CD group.

11 Q Okay. Tell me this -- I'll ask it again. You agree that  
12 to rule out chance, employees who you're comparing have to be  
13 similarly situated, right?

14 A But it's not a chance process, it's an age-neutral  
15 process.

16 Q Did you state in your report that what you did was to  
17 perform an analysis to rule out chance?

18 A Yes, the term chance here, in the abstract, is used.  
19 What we're specifically investigating with respect to these  
20 claims, is whether or not the process was consistent with an  
21 age-neutral process or not.

22 Q Let's just go one step at a time.

23 A Sure.

24 Q You start with the idea of did it happen by chance,  
25 right?

1 A We can start with did it happen by chance.

2 Q And to have it happen by chance, everyone in the pool,  
3 all the employees, had to have the same -- going into it, had  
4 to have the same chance of being let go, right?

5 A Correct. And that's my first analysis, looking at the  
6 entire R&D work force.

7 Q Okay. So, let's -- and to have the same chance, you  
8 agree they have to be similarly situated?

9 A Yes.

10 Q Okay. Colleen, can you pull up Plaintiff's Exhibit 240.  
11 Just for this analysis, why don't you make the first top half  
12 broader, so, we can read it.

13 A May I move the easel back slightly?

14 Q You know what, sure. Why don't we do this.

15 A Just a little bit would be fine.

16 Q Okay. And you agree, just looking at -- and by the way,  
17 to do this analysis, the R&D work force, 56 individuals, this  
18 is the table you used, right?

19 A This is the population, yes, that's correct.

20 Q And your conclusion was all these people have the same  
21 chance of being RIF-ed?

22 A In the first analysis, that's correct.

23 Q Okay. Because you needed to do that to rule out chance?

24 A When we looked at it at the broadest possible level.

25 Q Okay. And you can just eyeball this chart and see that

Thomas - Cross

20

1       there are people in different positions?

2       A     Correct.

3       Q     Different skill sets?

4       A     Correct.

5       Q     Different job duties?

6       A     Correct.

7       Q     Performing different -- working for different parts of  
8       the company?

9       A     Absolutely.

10      Q     Paid different amounts?

11      A     Sure.

12      Q     Having different educations?

13      A     Right.

14      Q     All of those people were doing their own separate thing  
15      and your analysis doesn't take into account any of those  
16      differences?

17      A     That's correct. My first analysis assumes that the  
18      entire population had the same likelihood. We refined those  
19      likelihoods --

20      Q     We're not at the likelihoods.

21      A     Okay.

22                 THE COURT: Let her finish her answer.

23                 MR. ENNIS: I'm sorry.

24                 THE WITNESS: When we move from the first analysis  
25      that looks at R&D as a whole, where we control for things

1 like CD group membership, the majority of funding or any  
2 funding coming through CD, we're assuming that there are  
3 differences in likelihood of RIF --

4 Q Okay.

5 A -- between people.

6 Q I'm not there yet.

7 A Okay.

8 Q All right. I'm just saying that in your testimony, you  
9 put down a number of standard deviations and a possibility,  
10 even though you knew all these people had different job  
11 skills, education, salaries, all differences you just  
12 described, isn't that right?

13 A Correct, because in the first analysis, the only thing  
14 we're controlling for is whether or not the person was in the  
15 R&D work force.

16 Q Dr. Thomas, to do your analysis, to come to a conclusion,  
17 you have to make sure that all the employees are similarly  
18 situated, isn't that what you testified?

19 A Correct, but based on the documents that I reviewed, PQ  
20 has several different explanations as to who was similarly  
21 situated.

22 Q I'm not sure -- you're getting ahead -- let's just stick  
23 with this document, okay?

24 A Well, this document is the foundation for all of my  
25 analysis.

1 Q I'm just, okay, let's stick with the document, all right?

2 A Okay.

3 Q It's your testimony they have to have the same chance of  
4 being terminated?

5 A We assumed that everyone in the same comparison group has  
6 the same likelihood, that's correct.

7 Q And you've come to this conclusion even though you  
8 testified that there are, at least, six different major  
9 differences between the people in this group?

10 A In that analysis, in my first analysis, that's correct.

11 Q And does your analysis describe the reason or account for  
12 the reason that Mr. Grabanese (ph) was retained? The 66 year  
13 old shipper?

14 A My analysis, regardless of what factors we're controlling  
15 for, never look at individuals.

16 Q Okay.

17 A The purpose of statistics is not to look at one  
18 particular individual. We're examining the decisions as a  
19 whole and we're looking at people as a collective.

20 Q And so, your analysis did not look at why Mr. Poolek  
21 (ph), the 64 year old principal scientist was retained?

22 A Specifically, him, no. That's not the purpose of my  
23 analysis.

24 Q And your analysis didn't look at whether Mr. Slobogan or  
25 Ms. Tickner may have retired?

1 A That's correct, we did not look at specific individuals.

2 Q You made no individual decisions or you did not review  
3 any individual decisions, right?

4 A We reviewed decisions. We didn't examine the work force  
5 person by person.

6 Q And you would have to examine the individual decisions to  
7 test your theory of possible discrimination, isn't that  
8 right?

9 A I disagree.

10 Q Okay. You've already said statistics can never be solely  
11 relied upon, right?

12 A Statistics can never be used to solely prove  
13 discrimination. They can be relied on, they can't be used to  
14 prove discrimination.

15 Q And you've testified before that's because you have to  
16 then look at the evidence of the individual decisions, right?

17 A Yes. The statistics is a supporting piece of the entire  
18 picture.

19 Q Okay. So, now let's go to the CD group. That was the  
20 second group you tested for, is that right?

21 A That's correct.

22 Q And Colleen, if you would pull up 241 and if you could  
23 enlarge that, please. Is this the group that you relied upon  
24 to come to your conclusion about membership in the CD group?

25 A Yes, these are the subset of individuals that PQ

1 indicated were part of the CD group.

2 Q So, you're looking at seven people, right?

3 A There are seven people included in the CD group.

4 Q And you testified earlier that you went back to -- you  
5 said a couple of times -- the 56 and there is eight people  
6 let go?

7 A Correct.

8 Q In the CD group, there was seven people, according to  
9 this chart and four people let go?

10 A Correct.

11 Q All right. And you can just look at it, once again, and  
12 you're assuming that all those people have the exact same  
13 chance of being let go, right?

14 A Within the CD group, yes.

15 Q And you agree that you controlled for Lau, one being in  
16 and out.

17 A Correct.

18 Q But, Lau would be -- have a different title, right?

19 A He has a different title, yes.

20 Q Different level in the company?

21 A Yes.

22 Q Different possibility of what he may or may not be doing?

23 A Sure.

24 Q And the two other people who were retained, Mr. Thompson  
25 and Ms. Fisher, were technicians and a technologist, is that



1 right?

2 A Fisher was a technician and Thompson was a technologist,  
3 correct.

4 Q And your -- and obviously, they are at a different level  
5 than the other four, right?

6 A I would presume so. I don't know for certain.

7 Q They were -- presumably have different skill sets?

8 A Possibly.

9 Q Have a different education background?

10 A Possibly.

11 Q And be doing different things from the other four?

12 A Possibly.

13 Q And your analysis did not look at why those three people  
14 were retained?

15 A Correct, my analysis does not look at the reason that any  
16 specific person was retained. We'll look at the decisions as  
17 a whole.

18 Q And to test your theory, again, you'd have to look at the  
19 individual decisions and evidence to support those decisions?

20 A I'm not sure I understand what you mean by test my  
21 theory.

22 Q Okay. Then let's go to D, I'm sorry, Plaintiff's 242.  
23 And this is, I'm sorry, 242. Okay, yeah, 242. This is the  
24 list of people who you relied upon to determine whether  
25 someone had a chance of being terminated based upon funding

1 through CDP program, is that right?

2 A These are the lists -- these are the individuals,  
3 according to answer 23, that received funding through the CD  
4 program.

5 Q And for all of these, let's see, that was the CD group  
6 membership, 241, right?

7 A Correct.

8 Q And funding is --

9 A The last analysis.

10 Q -- that goes to Exhibit C-1?

11 A Correct.

12 Q And in performing the analysis, in terms of looking at  
13 those people at C-1, I think you testified that you looked  
14 at, among other documents, 215 -- PQBM-214 and 215? Does  
15 that sound right?

16 A No. I think that 215 relates to the majority of funding  
17 from a terminated project.

18 Q Okay. And what about 233?

19 A I believe 233 is what I have listed as 235 and again,  
20 that's the majority of funding coming from a terminated  
21 project.

22 Q Okay.

23 A This information here is from the supplemental response  
24 to Number 23.

25 Q And I think you testified before that you did not -- how

1 did you come to the conclusion about what is a majority of  
2 funding?

3 A A majority of funding is anything that's 50 percent or  
4 greater.

5 Q And how did you come to that conclusion?

6 A It seemed like a reasonable approximation. We, you know,  
7 common sense would say that a majority is 50 percent or more.  
8 There was no definitive information provided that PQ  
9 considers 80 percent, 75 percent.

10 Q Okay.

11 A So, I used 50.

12 Q And there are nine people altogether? Am I counting that  
13 correctly?

14 A I think there's ten.

15 Q There's ten, okay, ten. And you agree the people on that  
16 list received funding from ten percent to 100 percent?

17 A Correct.

18 Q So, in terms of -- and who were the people who received  
19 the majority of their funding?

20 A I don't recall off the top of my head.

21 Q And so, if you looked at 215, that would tell you,  
22 apparently, as you said that was the document you looked at  
23 to determine a majority of funding?

24 A That was the majority of funding on the terminated  
25 projects, this is different.

Thomas - Cross

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1 Q Okay.

2 A This is whether -- what we're looking at here, we used to  
3 determine whether or not somebody had any funding, at all,  
4 via the CD group.

5 Q Okay.

6 A Or whether 100 percent of their funding.

7 Q And so, the -- in terms of terminated projects, let's  
8 look at 215, Colleen, if you would. I'm sorry, it's is P-8,  
9 I apologize. No, I want to go to, it is P-80 and it's  
10 PQBM-215.

11 THE COURT: You had 215 a minute ago.

12 Q There we are.

13 A That looks right.

14 Q Yup and if you could just do the middle portion that's a  
15 little bit taller than the other columns. According to this  
16 document, there's only three people in the group who received  
17 a majority of their funding. That would be, according to  
18 your explanation, 50 percent or more, Thompson, Wypart and  
19 Senderov?

20 MS. EYER: Objection, your Honor, I think that  
21 mischaracterizes the witness' testimony.

22 THE COURT: Well, the witness can characterize her  
23 own testimony.

24 THE WITNESS: What we do is, we see here that  
25 Senderov has 100 percent, according to this chart. Wypart

1 has 50 percent and Thompson has 100 percent. We would treat  
2 them as equivalent. We would treat the others as, who had  
3 less than the majority, we would treat them as a separate  
4 sub-group.

5 BY MR. ENNIS:

6 Q Okay, so, all I'm saying is when you are testing, doing a  
7 statistical analysis of the people who received the majority  
8 of funding, you're just looking at three people?

9 A No, that's not correct.

10 Q Let me ask you, did anyone else on that table have 50  
11 percent or more of their funding?

12 A There were three people in that particular sub-group, the  
13 people who received the majority. There is another array of  
14 people who received less than 50 percent. All of those  
15 people are studied together in the analysis. We have a  
16 statistical tool that allows us to account for the majority  
17 of funding, which means statistically, Senderov, Wypart and  
18 Thompson are going to be different. They're not going to  
19 have the same likelihood of termination as the rest of the  
20 people in that group. But we're still examining the entire  
21 56 population.

22 Q I'm sorry, I must have misunderstood your testimony,  
23 because I thought you said that what you did was you looked  
24 at the people who received the majority of their funding from  
25 the terminated projects?

1 A We controlled for whether or not somebody received.

2 Q Okay, and according to 215, there's only three people who  
3 received the majority of their funding?

4 A Correct, so, those three people would be in a different  
5 sub-group of the entire population.

6 Q And you can see from the bottom there, that the range of  
7 people who received funding was from 10 percent to 35  
8 percent?

9 A Is Centurk (ph) listed as zero?

10 Q Centurk looks like zero, that's true.

11 A So, it's from zero to 100 percent.

12 Q And there are different, it looks like from the top,  
13 they're in different businesses, right?

14 A Yes.

15 Q They are receiving funding from other sources?

16 A That's correct.

17 Q And again, you would have to look at the reasons, the  
18 specific reasons why anyone in particular was retained?

19 A Well, the explanation here, as I understand it, offered  
20 by PQ, was that people who were working on projects that were  
21 terminated were the ones that were let go.

22 Q Okay. And you would have, in terms of who was retained  
23 among those, you would have to look at the reasons why they  
24 were retained, wouldn't you agree?

25 A I would presume that if the explanation is the people on

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1 terminated projects were let go, the people who were retained  
2 were on projects that had continued funding.

3 Q Okay, but you would have to look at that analysis in the  
4 evidence?

5 A Sure.

6 MR. ENNIS: That's all I have, your Honor.

7 THE COURT: Uh-oh.

8 MS. EYER: Just one quick question, your Honor.

9 REDIRECT EXAMINATION

10 BY MS. EYER:

11 Q Dr. Thomas, as far as you're aware, has PQ ever contended  
12 that the skill set of the plaintiff, the level of their  
13 position or the level of their salary played any role in the  
14 decision to terminate them?

15 A I have not seen that explanation in anything I have  
16 reviewed.

17 Q Would it be appropriate to control for those factors if  
18 they were not, in fact, considerations in the decision?

19 A If they were no considerations in the decision, we would  
20 not want to control for them in the analysis.

21 Q Thank you very much.

22 A Thank you.

23 THE COURT: You may step down, thank you.

24 THE WITNESS: Thank you, your Honor.

25 MR. GOLDSHAW: Plaintiffs call Michael Bennett.

Thomas - Redirect

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1 MICHAEL BENNETT, Plaintiff's Witness, Sworn.

2 THE CLERK: Please state your name and spell your  
3 last name for the record, sir.

4 THE WITNESS: My full name is John Michael Bennett,  
5 B-E-N-N-E-T-T.

6 DIRECT EXAMINATION

7 BY MR. GOLDSHAW:

8 Q Dr. Bennett, what is your profession?

9 A I'm a crystallographer.

10 Q Where did you get your degree?

11 A My degree was got in Aberdeen, Scotland.

12 THE COURT: You said your profession, but I couldn't  
13 understand, what are you, a crystallographer, did you say?

14 THE WITNESS: I'm a crystallographer. Basically, we  
15 study how the atoms are arranged in the crystals.

16 THE COURT: The geography of crystals?

17 THE WITNESS: Pardon?

18 THE COURT: You study the geography of crystals?

19 THE WITNESS: Well, that's probably a way to put it,  
20 yes.

21 Q Do you have any relationship to Bonnie Marcus?

22 A Yes, she's my wife, my better half, right.

23 Q How long have you been married?

24 A 20-odd years.

25 THE COURT: Now, let's be specific, you're expected



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1 to know exactly how long you've been married.

2 THE WITNESS: I'm only supposed to know exactly when  
3 it's our wedding anniversary. Sorry, about that.

4 Q For my personal protection, I would like the record to  
5 reflect that I did not ask that question. Prior to your  
6 wife's termination from PQ Corporation on May 25, 2005, did  
7 you know that her job was in jeopardy?

8 A I knew she was going to be fired.

9 Q How did you know?

10 A Well, she talked to me about it.

11 Q What did she tell you?

12 A She told me that she was going to be fired and a bunch of  
13 other older people were going to be fired. She specifically  
14 mentioned Dick Hinchey, Eric Senderov and Al Behan. I know  
15 most of these people for almost 30 years, 30 to 40 years.

16 Q Are you describing a conversation that you had with your  
17 wife before the time she was actually terminated?

18 A Yes.

19 MS. MALLOY: Objection, leading.

20 THE COURT: It's helpful though.

21 MR. GOLDSHAW: I can rephrase it.

22 BY MR. GOLDSHAW:

23 Q Did your wife tell you who the source of her information  
24 was?

25 A John Lau.

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1 Q What did she tell you John Lau informed her?

2 A What he informed her or when he informed her, sorry.

3 Q We're going to get to both, so.

4 A Okay, what he informed her was that she and the older  
5 people, that I've mentioned, were going to be laid off in the  
6 future, okay.

7 Q When did your wife tell you that John Lau had informed  
8 her of that?

9 A Late in '04. I'm not certain I remember a specific date.

10 Q On how many occasions did you discuss with your wife,  
11 comments by John Lau that she and other older workers were  
12 going to be laid off?

13 A Oh, numerous times. I mean, I don't really remember.  
14 You know, you discuss things with your wife. I won't say it  
15 was daily, it was at least weekly. So, it was -- I don't  
16 know how many times.

17 Q How were you able to place in time when these  
18 conversations occurred with your wife, regarding the subject  
19 of older workers are going to be --

20 MS. MALLOY: Objection, leading repetitive.

21 THE COURT: Objection is sustained. It's  
22 irrelevant.

23 THE WITNESS: When did we discuss it?

24 THE COURT: No, wait for another question.

25 THE WITNESS: Okay.

Bennett - Direct

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1 BY MR. GOLDSHAW:

2 Q How were you able to recall when those discussions --

3 THE COURT: By using his mind, that's how he was  
4 able to recall. Go on to something that relates to an issue  
5 in this case, please.

6 MR. GOLDSHAW: Your Honor, respectfully, I think the  
7 timing of this will prove later on to be important. May I  
8 have a little leeway?

9 THE COURT: Try it.

10 Q How were you able to place the conversations in time,  
11 please?

12 A Oh, when I knew she was going to be laid off, the first  
13 thing I said to her was, well, you have to get all your  
14 personal stuff out of the company. You know, we've got 40 to  
15 60 years of zeolite information between us. Reprints,  
16 models, conference journals, that sort of thing. So, I  
17 wanted to make certain that she got all of these out of the  
18 company before she was let go. And this was done, as I said,  
19 late in '04, I remember us going there on a weekend. She  
20 went in and brought the stuff, I put it in the car and you  
21 know, moving stuff out for a reasonable period of time  
22 because it would look bad if all of a sudden, she completely  
23 emptied her office. Everybody else would kind of know that  
24 something was going on and you know, she didn't want to, you  
25 know, let out that she knew she was going to be let go.

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1 Q Did you and your wife take any actions, based on the  
2 information that you had received in advance that she and  
3 other older workers were going to be let go?

4 A Bonnie and I are both very careful with our money, you  
5 know, we put the maximum we can into a 401. I persuaded her,  
6 actually, persuade is not quite the right word. I insisted  
7 that she take the \$5,000 catch-up for an IRA as early as she  
8 could in '05. This, you know, when you're 50, you can make a  
9 catch-up and it's \$5,000. She was rather reluctant to have  
10 \$5,000 taken out of her paycheck at one time. Normally, in  
11 the years prior to this, she'd had it taken out, spread out  
12 over the 12 months. But we both know she wasn't going to be  
13 there 12 months and I wanted to get, you know, the maximum  
14 into her IRA that I could.

15 MR. GOLDSHAW: I have nothing further, at this time.

16 THE COURT: Any questions?

17 CROSS-EXAMINATION

18 BY MS. MALLOY:

19 Q It's correct, isn't it, that Ms. Marcus took the maximum  
20 IRA catch-up in 2002?

21 A 2002, almost certainly.

22 Q And how about 2003?

23 A Almost certainly.

24 Q And she also took the maximum catch-up in 2004?

25 A Correct.

1 Q And your testimony is that she took the \$5,000 catch-up  
2 in the year 2005, right?

3 A Yes.

4 Q And you said it was March, 2005?

5 A I didn't say March, 2005.

6 Q Do you recall when she took the catch-up --

7 A I --

8 Q -- in 2005?

9 A I don't know. All I know --

10 Q Only one of us can talk at a time.

11 A -- is it was very early in the year.

12 Q Is it true that she took the \$5,000 catch-up in March  
13 after she received a \$49,000 bonus?

14 A I don't know, sorry. I would think it was before that.

15 Q Do you know?

16 A No, I don't know. I could go and check, but I don't  
17 know.

18 Q Are you retired, sir?

19 A Yes, I am.

20 Q And what is your age?

21 A 70.

22 Q Do you consider yourself an expert in zeolites?

23 A Yes, I do.

24 Q And would you agree that your expertise could open a lot  
25 of doors for Ms. Marcus?

1 A It can open some doors, but not a lot of doors. We do  
2 different things in zeolite science.

3 Q Do you agree that you're well known as a couple who are  
4 zeolite chemists?

5 A We are known as a couple, yes.

6 Q As zeolite chemists?

7 A As zeolite --

8 Q I hope you're known as a couple, right.

9 A Well, I've had 40 years with the zeolite organization and  
10 you know, once I married Bonnie, yes, it's obvious we became  
11 known as a couple. We compliment one another in what we do.

12 Q Isn't it true that you never contacted any of your  
13 contacts to help Ms. Marcus find a job after she left PQ?

14 MR. GOLDSHAW: Objection, this is way beyond the  
15 scope of direct.

16 THE COURT: Overruled. Go ahead.

17 THE WITNESS: Yes, I would have mentioned some  
18 people to Bonnie that she could contact and mention my name.

19 BY MS. MALLOY:

20 Q My question was, did you ever contact any of your  
21 contacts to help her find a job?

22 A No.

23 MS. MALLOY: I have nothing further.

24 THE COURT: You may step down. Thank you, sir.

25 THE WITNESS: Thank you.

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1 MS. EYER: At this time, the plaintiffs call Andy  
2 Verzilli to the stand.

3 ANDREW VERZILLI, Plaintiff's Witness, Sworn.

4 THE CLERK: Please state your name and spell your  
5 last name for the record.

6 THE WITNESS: Andrew Verzilli, V-as in Victor,  
7 E-R-Z-I-L-L-I.

8 DIRECT EXAMINATION

9 BY MS. EYER:

10 Q Good morning, Mr. Verzilli.

11 A Good morning.

12 Q Could you please state for the record your employer?

13 A I am employed with the firm of Verzilli & Verzilli &  
14 Consultants. I'm one of the Verzillis.

15 Q And what is your profession, sir?

16 A I'm an economist.

17 Q Have you come to court today prepared to render an  
18 opinion as to the amount of monetary losses incurred by  
19 plaintiffs, Bonnie Marcus and Roman Wypart?

20 A I have.

21 Q Before we get to those opinions, I would like to take a  
22 moment to ask you about your qualifications. Do you have an  
23 undergraduate degree, sir?

24 A I do.

25 Q And in what field of study is that degree?

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1 A It's a, I'm sorry, I have a Bachelors of Science and  
2 Business that I received from Drexel University in June of  
3 1988 and I majored in economics.

4 Q Do you have any graduate degrees?

5 A I do.

6 Q And could you please state what is your graduate degree?

7 A It's a Masters in Business from LaSalle University and I  
8 received that in December of 1991.

9 Q Please describe briefly what it is that you do as an  
10 economist?

11 A Well, first, economics, the subject matter is really  
12 concerned about how we produce income, from an individual, to  
13 a business, to a government to society. That's what  
14 economics is about. And the work that I do is looking at the  
15 economic impact events have on somebody, either -- and  
16 businesses, either how it affects someone's earnings and  
17 their ability to earn income. Or the same with businesses,  
18 an impact that something has on the business and revenues of  
19 a business. And that work that I do in those areas, those  
20 involve matters in litigation.

21 There's another part of my work where I do economic  
22 analysis. I've done a lot of work for different townships  
23 and police departments throughout the Philadelphia area with  
24 their collective bargaining agreements. So, I do economic  
25 analysis and impact analysis of comparing a police



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1 department, their salaries, their compensation and where the  
2 contract, where I feel the contract should be going, looking  
3 at how to adjust the contract for the next period.

4 I've done other studies, I did --

5 THE COURT: I don't think we need all of those. Get  
6 on to something --

7 THE WITNESS: Okay, that's the kind of work that I  
8 do.

9 Q Thank you, sir. Do you have any teaching experience?

10 A I taught economics at Drexel, as an adjunct instructor  
11 for about seven years in the '90s. I taught the Principles  
12 of Economics I and II.

13 Q Have you completed any research in the field of  
14 economics?

15 A I have done some research.

16 Q And have you testified in court relative to the issues  
17 that you are here to testify today?

18 A I have testified many times in these types of matters.

19 Q And in which court, if you can recall?

20 A Here in Federal Court numerous times, most of the  
21 counties in this part of Pennsylvania, from Harrisburg east.  
22 And even up towards the northeastern corridor and I have  
23 testified in other states, including New Jersey, Delaware,  
24 Maryland, New York and on occasions, Arizona, a few times.  
25 But basically, it's more in this part of Pennsylvania.

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1 Q Is your firm retained by both plaintiff and defendant  
2 counsel in different cases?

3 A Yes.

4 MS. EYER: At this time, I would offer Andy Verzilli  
5 as an expert in the field of forensic economics.

6 THE COURT: Any questions at this point?

7 MR. ENNIS: No questions.

8 THE COURT: Go ahead.

9 BY MS. EYER:

10 Q Mr. Verzilli, at my request, did you estimate each of the  
11 plaintiffs' monetary losses resulting from the termination of  
12 their employment with PQ?

13 A Yes, I did.

14 Q And do your estimates include both monetary losses to  
15 date and losses going forward?

16 A They do.

17 Q In arriving at your opinion, what information did you  
18 rely on?

19 A Well, I had information specific to both Ms. Marcus and  
20 Mr. Wypart. You know, their background information,  
21 information about their employment at PQ, their earnings, the  
22 benefits. That specific information to each individual.  
23 What their earnings have been in employment since their  
24 employment at PQ ended. Then I had kind of information about  
25 benefits and other things at PQ, specific to PQ about the

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1 retirement plan and the changes in that and other information  
2 that we had about -- that would apply to both Mr. Wypart and  
3 Ms. Marcus. And then, the other information would be the  
4 general economic data that I rely on.

5 Q As to Ms. Marcus specifically, how did you go about  
6 estimating Ms. Marcus' monetary losses to date?

7 A Well, I estimate, step one would be had she remained at  
8 PQ, she was terminated in June of '05, had she remained there  
9 up to the present, what her earnings would have been. Her  
10 earnings, she also had received bonuses. There was a profit  
11 sharing plan, all of that has since stopped and also,  
12 retirement. So, what she would have earned up to the  
13 present, minus what she has actually earned.

14 Q And your analysis, that would include the value of  
15 benefits, as well, is that correct?

16 A Right, it would include such things as the employer's  
17 contributions to the retirement plan and matching 401K  
18 contributions and Ms. Marcus did have some replacement health  
19 insurance costs that she had incurred for awhile.

20 Q Based on your analysis, what is the total amount of  
21 compensation Ms. Marcus would have earned in the present had  
22 she remained employed at PQ?

23 A I estimated that, up to the present, it would be  
24 approximately, \$742,347. That's based on her salary at the  
25 time of \$122,000 approximately. I increased that salary

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1 three percent a year, based on what her, kind of looking at  
2 what her increases were, as well as what's happened in the  
3 economy. I considered she had bonus every year and the bonus  
4 is about -- it was about 27 percent or so of earnings. So, I  
5 added that in. There was the contributions from employment,  
6 I mean, for retirement, a 401K that were about seven percent  
7 a year and one year of profit sharing, which was \$2,800.  
8 Because that ceased in 2007. So, when we add all that up,  
9 that is the \$742,347.

10 Q And what of her actual earnings to date then?

11 A Well, I based it on what her earnings were. I know what  
12 her earnings were in '06, '07 and '08 in alternative  
13 employment. I added those up and then, as of this year, I  
14 estimated that she would continue to earn about just over  
15 \$15,000 a year, which was looking at what she's earned since  
16 the termination and just getting an average. And when you  
17 add all that up, it's about \$74,444.

18 Q So, based on this analysis, what is your expert opinion  
19 as to the net monetary losses to date for Ms. Marcus?

20 A It's \$667,903.

21 Q Did you also conduct an analysis of Ms. Marcus' future  
22 losses?

23 A Yes.

24 Q And how did you go about estimating those losses?

25 A It's the same process, now, we're doing it into some

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1 period into the future. So, the first thing is to determine  
2 that period of time. Ms. Marcus is now, she was 65 in  
3 September of this year. It's my understanding that her  
4 retirement that she planned to retire at age 70. I kind of  
5 looked at the economic environment about that to determine  
6 the appropriateness of that and determined that was a  
7 reasonable assumption. So, the period of time would be from  
8 today to age 70, just under five years. I have what her  
9 earnings would have been at PQ and project those out into the  
10 future. We still have the bonus of 27 percent, the  
11 retirement contributions that broke up into four percent  
12 towards retirement and three percent for 401K, that's seven  
13 percent. And there was a one-time possible -- one-time  
14 restrictive stock award that would have been there at  
15 retirement.

16 I added all that up and then I subtracted out how  
17 she -- if she continues to earn \$15,000 roughly a year today,  
18 over the next five years, what that will be and you subtract  
19 one from the other.

20 Q And your estimate of Ms. Marcus' future earnings, that  
21 was based on the amount that she has earned to date since her  
22 termination with PQ, is that correct?

23 A Yes.

24 Q Sir, what was the, based on your analysis, what is your  
25 estimate of the amount that Ms. Marcus would have earned from

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1 today forward, if she had remained employed by PQ?

2 A It's \$872,013. Again, it includes salary, bonus,  
3 retirement contributions and this one-time stock restricted  
4 stock award payment.

5 Q And what is your estimate as to what she will actually  
6 earn given her termination from PQ?

7 A It's approximately, \$70,814 and that assumes that she  
8 will continue to earn just over \$15,000 a year in her  
9 consulting work and that will go on to age 70, as well.

10 Q And based on your analysis, what is your expert opinion  
11 as to the net monetary losses going forward for Ms. Marcus?

12 A \$801,199.

13 Q I'm sorry, could you repeat that, sir?

14 A \$801,199.

15 Q Did you also conduct an analysis for Mr. Wypart, sir?

16 A I did.

17 Q How did you go about estimating Mr. Wypart's monetary  
18 losses to date?

19 A The same process, what he would have earned from PQ up to  
20 the present, from the time of his termination in May of '05  
21 and subtracting out what he's actually earned.

22 Q And did you conduct an analysis both for Mr. Wypart's  
23 monetary losses to date and for his future monetary losses?

24 A Yes.

25 Q Based on your analysis, what is the total amount of

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1 compensation Mr. Wypart would have earned to the present, if  
2 he remained employed at PQ?

3 A I estimated that to be \$479,793. That's based on his  
4 earnings at PQ, of approximately, \$101,354 a year, his  
5 salary. The same increase is three percent a year. Two  
6 profit-sharing payments that were in the -- one was at \$2,500  
7 in '06 and one was at \$2,600 in '07. And then after, just as  
8 with Ms. Marcus, I didn't consider that any longer. The same  
9 health and retirement contributions and there were some  
10 out-of-pocket health insurance costs. When you add all that  
11 up, that gave us \$479,793.

12 Q And did you also account for certain out-of-pocket losses  
13 that Mr. Wypart incurred un-related to his salary losses?

14 A Yes.

15 Q And roughly how much were those losses?

16 A That was \$22,400.

17 Q And what had Mr. Wypart's actual earnings since the time  
18 of the 2005 RIF been?

19 A It has been approximately, \$312,203.

20 Q So, based on this analysis, what is your expert opinion  
21 as to the net monetary losses to date for Mr. Wypart?

22 A \$189,990.

23 THE COURT: Excuse me, you're subtracting \$312,203  
24 from \$479.793?

25 THE WITNESS: And adding back in the expenses of

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1 \$22,400.

2 THE COURT: Thank you.

3 Q Sir, how did you go about estimating Mr. Wypart's future  
4 monetary losses?

5 A The same process with Ms. Marcus. Some period of time,  
6 what he would have earned at PQ, minus what he's now earning.  
7 With respect to Mr. Wypart, it's indicated to me that he's  
8 now 61, he intends to work to 75. Again, I looked at the  
9 reasonableness of that assumption and felt that, given his  
10 intentions and what we see in the labor market, that's a  
11 reasonable assumption for his earning potential at PQ. I  
12 have projected that, as of the present, his salary there  
13 would have been about \$114,000 a year. Added the retirement  
14 and 401 contributions and then, I subtracted out that he's  
15 now making \$90,250 a year in his present employment and I  
16 gave some retirement contributions in that employment, as  
17 well and subtracted one from the other.

18 Q And based on your analysis -- well, let me first ask you,  
19 sir, did you, in your calculations, include recent  
20 adjustments to Mr. Wypart's income at Klockner Pentaplast?

21 A Yes.

22 Q And what were those adjustments?

23 A In December, 2008, his salary was decreased from \$95,000  
24 to \$90,250 a year. So, I factored that in and they were  
25 providing 401K matching contributions and they ceased those,



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1 at that time, as well.

2 Q Did you assume that those 401K contributions would be  
3 terminated permanently or did you otherwise account for them?

4 A I did give consideration that there would be, in the  
5 future, some reinstatement of those contributions.

6 Q Sir, based on your analysis, what is your estimate of the  
7 amount Mr. Wypart would have earned from today forward if he  
8 had remained employed with PQ?

9 A \$1,509,481.

10 Q And what is your estimate of what he will actually earn,  
11 given his termination from PQ?

12 A \$1,132,835.

13 Q And based on your analysis, what is your expert opinion  
14 as to the net monetary losses for Mr. Wypart going forward?

15 A \$376,646.

16 THE COURT: \$646 or \$642?

17 THE WITNESS: I have \$376,646.

18 THE COURT: Two? You dropped your voice on the last  
19 figure, what is it?

20 THE WITNESS: \$646.

21 THE COURT: Thank you.

22 THE WITNESS: I'm sorry.

23 Q In estimating the future monetary losses as to Ms. Marcus  
24 and Mr. Wypart, did you use the concept of present value?

25 A I did.

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1 Q And could you please, just briefly, explain for the jury  
2 what that means?

3 A Present value is determining a lump sum that we need  
4 today, if we invest it, that will provide those income  
5 payments into the future. So, it's just a process. For  
6 instance, if I want to have -- pay myself \$100 a year for the  
7 next ten years, I could take ten \$100 bills and put them in a  
8 box and every year, I'll take out \$100 and at year ten, when  
9 I take that last one out, I have zero left over.

10 However, I could also invest that money and if I  
11 earn, as an example, five percent on that investment, I would  
12 need to put about \$750 away and that \$750 would generate \$100  
13 every year and when I take that last \$100, I have nothing  
14 left. And that's what we're doing on the future estimates,  
15 we're determining how much money do we need today? If we  
16 invested it, that would replace the difference in the two  
17 earnings streams for each of the plaintiffs. I've based it,  
18 in terms of, when we do present value, it's a function of the  
19 period of time, so, for Ms. Marcus, it's about five years.  
20 For Mr. Wypart, it's a little under 14. The incomes streams,  
21 the two levels of income.

22 We also factor in, that over these periods of time,  
23 their earnings would have increased, as they had previously.  
24 So, I consider them, on both individuals, a three percent  
25 earnings growth rate and the discount rate, the interest rate

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1 I assumed for the present value was 4.6 percent. And where I  
2 determined that was from looking at the past, we're looking  
3 at replacement of someone's earnings. So, we need a  
4 risk-less investment, we need something that's short term and  
5 has some liquidity to it. So, I generally look at short-term  
6 treasury securities and I look in the last 20 years and on  
7 average, short-term treasury securities have yielded 4.6  
8 percent. We also have to know right now, short-term treasury  
9 securities are about zero or just over zero, if I looked  
10 today, not even half a percent.

11 So, that discount rate, right now, is a little high,  
12 but over these periods of time, as the economy changes, as  
13 the economy starts to grow and we heard testimony yesterday  
14 about the Federal Reserve. They're keeping short-term  
15 interest rates where they are now, because inflation is in  
16 check, but as we grow, inflation's going to come back and  
17 they're going to tighten the money supply and we'll see  
18 interest rates start to increase. So, over these periods of  
19 time, on average, I feel 4.6 percent is reasonable. And what  
20 that means is, for instance, with Mr. Wypart, the \$376,000,  
21 we need that today to replace the difference in those  
22 earnings such that as the age of 75, we have nothing left  
23 over. If we were to pay him the difference between his  
24 earnings at PQ and his present earnings every year for the  
25 next 14 years, we'll have nothing left over. That's what

1 present value means.

2 Q So, to put it simply, you lessened the amount of their  
3 future losses based on the assumption that they can invest  
4 the money, is that correct?

5 A Yes, that we have a lump sum today, that lump sum will  
6 generate the differences in earnings. The higher the  
7 interest rate, the lower the present value. There's an  
8 inverse relationship. So, right now, I, again, in my  
9 opinion, 4.6 is reasonable, because over the long term we'll  
10 go back to that kind of a discount rate.

11 Q Again, sir, just to summarize, you lowered -- the 800  
12 value and the 376 value, those are both accounting for the  
13 fact that they can invest the money and make money off of it  
14 into the future?

15 A That's correct.

16 Q You testified that you used the plaintiff's intended  
17 retirement date to estimate their future economic losses,  
18 correct?

19 A I did.

20 Q And why is that?

21 A Well, when we're looking at earnings and producing income  
22 and an assumption of retirement, one area that we -- or one  
23 factor is intention, someone's intentions about retirement.  
24 So, that's a very reliable assumption, given other factors  
25 and the economic setting. For instance, except for some

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1 certain occupations, we don't have mandatory retirement ages.  
2 These occupations don't fall into that. We know the labor  
3 force is changing and that individuals who are 65 and over,  
4 their labor force participation is growing dramatically. And  
5 also, in terms of the statistical life expectancy, how long  
6 someone will live is beyond these assumptions. So, we factor  
7 those in, in my opinion, the stated intentions of each of  
8 these individuals was a reasonable assumption with respect to  
9 their retirement.

10 Q Are there tables that some people in your field use to  
11 estimate how long somebody is likely to continue to work?

12 A There were tables. There are some tables that have been  
13 published about work life.

14 Q And do you consider those tables to be reliable?

15 A No.

16 Q Why is that, sir?

17 A Well, the Bureau of Labor statistics tables were last  
18 published in 1986, so, they are now 23 years old. With data  
19 that was from 198\79, so the underlying data is 30 years old.  
20 It doesn't factor all these changes we've seen in the  
21 economy, the no more mandatory retirement ages, changes in  
22 social security and when individuals can collect social  
23 security. It doesn't reflect intentions and it doesn't  
24 reflect the changing economic environment of older workers  
25 working longer. So, that information to me is not reliable

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1 in terms of this process and estimating the earning potential  
2 of someone.

3 Q Sir, did you account for any severance that plaintiffs  
4 received at the time of their termination at PQ?

5 A I did.

6 Q So, your estimates of their damages would have already  
7 included the amount of severance that they received?

8 A That is correct. For instance, Ms. Marcus received just  
9 over \$29,000, so I netted -- and my estimate started after  
10 that payment of severance. So, I've already accounted for  
11 the severance that each of the plaintiffs received.

12 Q At this time, I would like to direct your attention to  
13 P-227 and P-228. I believe they are in the binder in front  
14 of you, but if not --

15 A 227 and 228?

16 Q Yes, you can look at the cover and see if they are.

17 A I found them.

18 Q You found them, great. Do you recognize these documents  
19 as charts summarizing the analysis that you just testified  
20 to?

21 A Yes.

22 MS. EYER: I now move the admission of P-227 and  
23 P-228.

24 THE COURT: Hearing no objection, they will be  
25 received.

Verzilli - Direct

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1 (Plaintiffs Exhibits 227 and 228 received in  
2 evidence.)

3 Q And finally, sir, are all of the opinions that you have  
4 testified to here today, presented to a reasonable degree of  
5 economic certainty?

6 A They have.

7 THE COURT: Are you finished?

8 MS. EYER: I am finished, your Honor.

9 THE COURT: It's your turn.

10 CROSS-EXAMINATION

11 BY MR. ENNIS:

12 Q You indicated that plaintiff's stated intention of  
13 retirement date was a factor you considered?

14 A Yes.

15 Q And if Ms. Marcus had told people that she wanted a  
16 package from PQ, so she could retire, that would affect your  
17 calculation of damages?

18 A If she wanted -- when you say package, I don't --

19 Q If she had told people that she wanted a package from PQ  
20 so she could retire, that would affect the calculation of  
21 damages that you would have assumed that she would recover to  
22 date and into the future?

23 A If that retirement was before my assumption. You didn't  
24 say when, you said package retirement, so I didn't quite  
25 understand the question.

Verzilli - Cross

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1 Q So, assuming it was before the dates --

2 THE COURT: She had already retired.

3 Q Right, assuming it's before the date that you've  
4 calculated?

5 A If that's felt that's when she would have ended her  
6 employment there.

7 Q Okay. And you agree, I think you just testified, that  
8 the number of positions for people who are a65 or older is  
9 growing substantially in the work place?

10 A Well, what I said was the labor force participation. So,  
11 in terms of older workers are going to be working more and  
12 longer.

13 Q And that meant that there would be more jobs for people  
14 that age in the work force, isn't that right?

15 A I don't know if there's going to be more jobs. It just  
16 means that in terms of the labor force growth, when the BLS  
17 says the labor force is growing, that segment is growing more  
18 than the other ages, so, the same number of jobs -- there may  
19 be some growth in jobs, but more of them are to be taken up  
20 by older workers.

21 THE COURT: Have you expressed any view as to  
22 whether it's more old people starting new jobs now than used  
23 to be? Is there a distinction between holding a job and  
24 acquiring a job?

25 THE WITNESS: I think it's both. I think there are



1 older workers who are maintaining their jobs and some that  
2 are re-entering the labor market.

3 THE COURT: Thank you.

4 Q And you recall giving sworn testimony in this matter  
5 before, is that right?

6 A Yes.

7 Q And do you recall, at that time and I'll tell you what,  
8 well, let me ask you. Do you recall testifying at that time,  
9 in response to a question from me, the number of employees 65  
10 and above in the work force is growing substantially and your  
11 answer was yes?

12 A That's what I just said, yes.

13 Q Okay. And then the next question was --

14 MS. EYER: Objection, your Honor, this is hearsay.

15 The witness is --

16 THE COURT: No, it isn't. Objection overruled.

17 MR. ENNIS: And then the next question was --

18 MS. EYER: Peter, could you at least let us know the  
19 page before you --

20 MR. ENNIS: I'm sorry, page 42.

21 THE COURT: Go ahead, ask your question.

22 MR. ENNIS: Okay.

23 BY MR. ENNIS:

24 Q And the next question was, "There is more jobs for people  
25 at that age?" And the answer was, "There are going to be

1 and the labor force means those are people that are willing  
2 to work, as well." Do you recall that testimony?

3 A That's right.

4 THE COURT: That's what he just said.

5 Q And I then asked you, "And it's growing --" I think you  
6 said "ten times as fast as some of the other segments of the  
7 work force?"

8 MS. EYER: Objection, your Honor, he's simply  
9 reading back the witness' testimony.

10 THE COURT: Yes, he is. Objection overruled.

11 BY MR. ENNIS:

12 Q "And it's growing, I think you said, ten times as fast as  
13 some of the other segments in the work force, is that right?"  
14 And your answer was, "Yes."

15 A That's correct.

16 Q Okay.

17 A And that comes from this document right here.

18 Q Okay. And despite the growing market for positions for  
19 people 65 and older, your assumption for Ms. Marcus assumes  
20 that she never gets a full-time job again?

21 A That's right, comparable to what she had at PQ. That  
22 she, in the last four years, hasn't secured that comparable  
23 job.

24 Q And in fact, you're assuming \$15,000 per year?

25 A That her earnings will continue.

1 Q Sure.

2 A Yes.

3 Q And did you account for any earnings this year for Ms.  
4 Marcus?

5 A Yes, I did a count for -- can I just find that number for  
6 you, I'm sorry.

7 Q Sure.

8 A I estimated as of now, that it would have been about  
9 \$13,000 this year.

10 Q Okay. And the stock award that you calculated was  
11 \$8,000?

12 A It was -- no, it was a little bit less. It was --

13 Q That's all right, it was --

14 A \$7,614 that would have been payable when she retired.

15 Q Okay. And moving to Mr. Wypart, you assumed he would  
16 continue to work, without any changes, for 14 years, is that  
17 right?

18 A That -- right, well, his earnings now will, the \$90,000  
19 will grow three percent a year.

20 Q Without any change?

21 THE COURT: Three percent a year he said.

22 MR. ENNIS: I'm sorry, you're right.

23 Q Except for the three percent, there would be no other  
24 changes?

25 A That's right. I didn't assume he would get another job

1 that paid much higher.

2 Q And were you aware that he had been laid off or left two  
3 jobs previous to PQ?

4 A Yes. The one was, I think it was in '06 or '07, but I  
5 had that -- well, I have his actual earnings, so I did know  
6 that he worked at another firm.

7 Q But I mean -- I'm sorry, even before PQ, he had had other  
8 jobs?

9 A Oh, I'm sorry. It may be in the original information  
10 about his background. I'm sorry, I thought you meant since.  
11 I apologize.

12 Q That's okay. But despite the fact that he had had other  
13 jobs that he had been laid off from or had left in the past,  
14 you assumed 14 years of un-interrupted work at his current  
15 employer, is that right?

16 A Yes.

17 MR. ENNIS: That's all I have.

18 THE COURT: You may step down. Thank you, sir.

19 THE WITNESS: Thank you.

20 THE COURT: We'll take a ten-minute recess, at this  
21 point.

22 THE CLERK: All rise.

23 (Court in recess 11:36 to 11:47 o'clock p.m.)

24 THE CLERK: All rise.

25 THE COURT: Be seated, please. Proceed.

Verzilli - Cross

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1 MR. GOLDSHAW: Plaintiffs call Ed Myszak.

2 EDWARD MYSZAK, Plaintiff's Witness, Sworn.

3 THE CLERK: Please state your name and spell your  
4 last name for the record.

5 THE WITNESS: It's Edward Myszak, Jr. M-Y-S-Z-A-K.

6 THE CLERK: Thank you, sir.

7 DIRECT EXAMINATION

8 BY MR. GOLDSHAW:

9 Q Do you currently work for PQ Corporation?

10 A Yes.

11 Q Do you hold a management position?

12 A Yes, I do.

13 Q How long have you worked as a manager at PQ Corporation?

14 A For 28 years.

15 Q Have you ever reported directly to Roz Kutchins?

16 A Yes, I did.

17 Q Approximately, when?

18 A From late-80s, I think, through 2003 and then again from  
19 2005 to early 2008.

20 Q Have you worked within Michael Imbriani's unit, during a  
21 portion of the time you reported to Rosalind Kutchins?

22 A Yes.

23 Q Have you ever been demoted at PQ Corporation? I'm saying  
24 demoted.

25 A Yes.

Myszak - Direct

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1 Q When was that?

2 A 2003.

3 Q Who informed you of your demotion?

4 A Rosalind Kutchins and Bill Rathgaver (ph).

5 Q When Ms. Kutchins informed you of your demotion, what did  
6 she say?

7 A She said that it had nothing to do with my performance  
8 and it came from above.

9 Q Did she specify who she meant when she referred to it  
10 coming from above?

11 A I took it to mean Silverman and Imbriani.

12 Q Michael Imbriani --

13 A Michael Imbriani.

14 Q -- head of the chemicals division at the time?

15 A Right.

16 Q To your knowledge, did Ms. Kutchins file a complaint with  
17 human resources, based on your demotion?

18 A Yes.

19 Q At the time that you were demoted by Michael Imbriani  
20 and/or Stan Silverman, did Mr. Imbriani know much about you?

21 A No.

22 Q What was the total number of times that Mr. Imbriani ever  
23 interacted with you at the time of your demotion?

24 A At most, two.

25 Q How were your performance reviews at the time?

Myszak - Direct

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1 A Excellent.

2 Q At the time of your demotion, you were replaced by  
3 someone named Barry Schwartz?

4 A That's correct.

5 Q And he was in his 40s at the time?

6 A That was my estimate, I really don't know his age.

7 Q The parties have reached a stipulation as to his age at  
8 the time of the reduction in force, which was 49. So, in  
9 2003, he would be a little younger than that.

10 A Okay.

11 Q Have you ever -- no, you do know Barry Schwartz is  
12 several years younger than you, even if you don't know his  
13 age?

14 A Yes.

15 Q Have you ever spoken with the company's lawyer, Walter  
16 Stickley, regarding your demotion?

17 A Yes, I did.

18 Q When was that?

19 A Several weeks after the demotion.

20 Q What was said at the time of your conversation with the  
21 company's lawyer, Walter Stickley?

22 A What I said?

23 Q What you said to each other.

24 A Okay. I said that I felt it was I was unfairly treated  
25 and I thought it was age discrimination and I was thinking of

Myszak - Direct

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1 seeking outside counsel.

2 Q When you told the company's lawyer that you thought your  
3 demotion was age discrimination --

4 A Yes.

5 Q -- how did he respond?

6 A Well, he responded to the dual comment of age  
7 discrimination and that I thought I was unfairly treated, so,  
8 I can't say what he -- which one he was assenting to, but he  
9 nodded his head.

10 Q At the time he nodded his head, did he also point out a  
11 recommendation to you for an attorney?

12 A That's correct.

13 Q After you complained of age discrimination to Mr.  
14 Stickley, did he tell you that an investigation would be  
15 done?

16 A No.

17 Q Did anyone in human resources tell you an investigation  
18 would be done?

19 A No.

20 Q Did anybody, in fact, ever speak to you as part of any  
21 investigation into your complaint of age discrimination?

22 A No.

23 Q At the time of the lay-offs, excuse me, immediately prior  
24 to the lay-offs in 2005, as part of a reduction in force, you  
25 were not in research and development, correct?



Myszak - Direct

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1 A That's correct.

2 Q And you didn't play any role in deciding who should be  
3 selected for termination as part of the 2005 RIF, correct?

4 A That's correct.

5 Q And you didn't play any role in deciding which CD  
6 projects or other projects would be picked up by business  
7 units after the RIF, correct?

8 A That's correct.

9 Q At the time of the May, 2005 reduction of force, did your  
10 position change?

11 A Yes, it did.

12 Q Was your new position called Zeolite R&D Manager?

13 A Yes, it was.

14 Q And that was a higher level position for you, correct,  
15 than you had been holding?

16 A That's correct.

17 Q It was a promotion?

18 A That's correct.

19 Q At the time of your promotion -- was it at the time of  
20 your promotion in 2005, that you once again began reporting  
21 to Rosalind Kutchins?

22 A Yes, it was.

23 Q And at the time of your promotion, you held one patent,  
24 right?

25 A At the time of my promotion, yes.

Myszak - Direct

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1 Q Did you know that the plaintiffs, Bonnie Marcus and Roman  
2 Wypart were candidates for the position that you got at the  
3 time of the reduction in force?

4 A At that time, no, I did not know that.

5 Q And you're not familiar with what Bonnie Marcus' job  
6 duties were at the time she was selected for termination?

7 A That's correct.

8 Q When you began reporting to Rosalind Kutchins again, at  
9 the time of the May, 2005 RIF, she was, at that time,  
10 reporting up through Michael Imbriani, correct, within his  
11 chemicals division?

12 A I believe so. Yes, that's correct.

13 Q And while you were reporting to her in that role, she  
14 told you that she was still afraid of Mr. Imbriani, right?

15 A On one instance, when I asked her about another  
16 situation, yes.

17 Q She was afraid to even ask him why you weren't invited  
18 back into a certain meeting, is that --

19 A Well, she never said she was afraid. It was my  
20 interpretation that she was afraid, I believe. See, I'm a  
21 little fuzzy on that part of it.

22 Q Why don't you explain what led you to believe that Ms.  
23 Kutchins was still afraid of Mr. Imbriani, at that time,  
24 after you began reporting to her again?

25 A Well, there was a meeting being held on strategic

Myszak - Direct

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1 planning and I was not on the list and yet, other members,  
2 peers of mine were, for that particular meeting. And I  
3 approached her about it and asked her why I wasn't on that  
4 and she said she didn't know, Imbriani put the list together  
5 and she just didn't feel comfortable going up and talking to  
6 him.

7 Q Didn't feel comfortable even asking him why you weren't  
8 invited to a meeting?

9 A Yes.

10 Q When you moved back into Mr. Imbriani's unit --

11 A Mm-hmm.

12 Q -- you were afraid that there might be a repeat pattern  
13 of age discrimination against you, right?

14 A Well, it's that same situation I just described.

15 THE COURT: I'm sorry, talk into the microphone,  
16 please and keep your voice up.

17 THE WITNESS: Okay.

18 Q And several months after you moved back into Mr.  
19 Imbriani's unit in 2005, did you tell Kevin Doran (ph), the  
20 head of human resources, that you were afraid there might be  
21 a repeat pattern of age discrimination against you?

22 A I expressed some concern there, yes.

23 Q Now, you know Dr. John Lau, right?

24 A Yes.

25 Q You've described Dr. Lau as a person who, in your words,

Myszak - Direct

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1 tries to use a lot of smoke and mirrors?

2 A That's correct.

3 Q And based on your past dealings with Dr. Lau, on at  
4 least, one occasion, you've come to question Dr. Lau's  
5 integrity, correct?

6 A That's correct.

7 MR. GOLDSHAW: I have nothing further.

8 MR. ENNIS: I have no questions.

9 THE COURT: You may step down. Thank you, sir.

10 MR. GOLDSHAW: Plaintiffs call Dr. John Lau.

11 (Pause.)

12 JOHN LAU, Plaintiff's Witness, Sworn.

13 THE CLERK: Please state your name and spell your  
14 last name for the record.

15 THE WITNESS: My name is John Lau, the last name is  
16 Lau, spelled L-A-U.

17 THE CLERK: Thank you, sir.

18 DIRECT EXAMINATION

19 BY MR. GOLDSHAW:

20 Q You were the vice president of R&D in May, 2005?

21 A Yes.

22 Q And in prior testimony, you have stated that the  
23 termination of the plaintiffs was, in your words, entirely  
24 tied to the funding of the corporate development projects, is  
25 that right?

Lau - Direct

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1 A That's correct.

2 Q You're still employed as a vice president of the company,  
3 right?

4 A Yes.

5 Q And you want to see the company prevail in this  
6 litigation?

7 MS. MALLOY: Objection, your Honor.

8 THE COURT: Objection overruled. You hope the  
9 company wins?

10 THE WITNESS: I hope that the truth comes out.

11 THE COURT: Ah-ha.

12 BY MR. GOLDSHAW:

13 Q Are you willing to fabricate testimony in order to help  
14 the company prevail in this litigation?

15 A Absolutely not.

16 Q I'd like to show you a document that's been marked as  
17 Exhibit 281 and was the same exhibit, at one time, it was  
18 previously marked as Defendant's Exhibit --

19 THE COURT: And nobody can see it, of course.

20 MS. MALLOY: Your Honor, may we approach the bench?

21 THE COURT: Do you really need to?

22 MS. MALLOY: This was the exhibit that you were  
23 going to hold in -- you were holding in abeyance.

24 THE COURT: I don't know what we're talking about.

25 MR. GOLDSHAW: We've gone over this. May I pass a

Lau - Direct

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1 copy of the exhibit, your Honor?

2 THE COURT: Let me take a look at it. I'll see  
3 counsel at sidebar on what the problem is.

4 (Sidebar discussion as follows:)

5 THE COURT: Did we talk about this exhibit?

6 MR. GOLDSHAW: Many times, many pre-trial  
7 conferences.

8 MS. MALLOY: And your Honor said that you were going  
9 to withhold a ruling on it until you saw it and it was going  
10 to be used. I didn't think it was appropriate for him to put  
11 it up before you did that.

12 THE COURT: Well, what's the problem with this  
13 exhibit?

14 MS. MALLOY: It's impossible to explain it without  
15 referring to a prior trial, this was a demonstrative exhibit  
16 that was used in the prior trial.

17 MR. GOLDSHAW: Your Honor, I would not refer to the  
18 prior trial.

19 MS. MALLOY: It's talking about the fact that he  
20 testified --

21 THE COURT: Frankly, what's the -- what are you  
22 planning to ask the witness about it?

23 MR. GOLDSHAW: Can I step up --

24 THE COURT: What?

25 MR. GOLDSHAW: I'm too short, can I step up --

Lau - Direct

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1 THE COURT: Well, just talk out loud.

2 MR. GOLDSHAW: Okay, this document was prepared by  
3 this witness, Mr. Lau --

4 MS. MALLOY: No, it was not.

5 MR. GOLDSHAW: I want to ask him about his testimony  
6 to support the reason it is evidence of pretext, it is  
7 evidence of the change in positions. Your Honor has asked  
8 us, at least three times and has ruled I can examine the  
9 witness on --

10 THE COURT: You don't need the document for that.

11 MR. GOLDSHAW: I do, your Honor.

12 THE COURT: No.

13 MR. GOLDSHAW: I must say --

14 THE COURT: I'm getting fed up with every witness  
15 being shown something before they testify. You can ask him  
16 questions and get his testimony on the record. You don't  
17 need the exhibit.

18 MR. GOLDSHAW: Your Honor, may I, at a later time,  
19 make a proffer?

20 THE COURT: I've ruled, get back to your seat.

21 (End of sidebar discussion.)

22 BY MR. GOLDSHAW:

23 Q Sir, for purposes of your testimony in this litigation,  
24 did you create a document that purported to show the  
25 plaintiffs' actual CDP funding that contained false figures

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1 for the plaintiffs and other older workers?

2 A Can you repeat that question again?

3 Q Yes. For purposes of your testimony in this litigation,  
4 did you participate in the creation of a document that  
5 falsely listed the plaintiffs' CDP funding in 2005?

6 A At no time did I falsely invent any document.

7 Q Did you -- are you aware of a document prepared for  
8 purposes of this litigation, that contains the information  
9 purporting to show their actual CDP funding for 2005?

10 A I have prepared many documents throughout this trial.  
11 So, I don't -- you need to be a little bit more specific.

12 Q You know I'm talking about the document I just showed  
13 you, right?

14 MS. MALLOY: Objection, improper.

15 THE COURT: Objection sustained. Do you know  
16 anything about what employees got funding from various  
17 sources?

18 THE WITNESS: Yes.

19 THE COURT: Let's get the substance of what he --

20 BY MR. GOLDSHAW:

21 Q Isn't it a fact that you, for purposes of this  
22 litigation, created a document that shows that plaintiff,  
23 Bonnie Marcus, received actual 100 percent of her salary, CDP  
24 funding, at the time of her termination?

25 A Yes and this is also true that Bonnie Marcus, at the time



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1 of her termination, did receive 100 percent of her salary.

2 Is that in dispute?

3 A Isn't it a fact that you had a previous sworn statement  
4 listed Bonnie Marcus as only 50 percent CD funded in 2005?

5 A And the other 50 percent in this particular period of  
6 time, was supposedly business funding and there was no budget  
7 from the business funding. So, if someone's received 100  
8 percent and so, where did that money come from?

9 Q Are you saying that you didn't know where the money came  
10 from, so you doubled the amount of CD funding --

11 A No, no, no, I'm telling you that we know the individual  
12 received 100 percent of their salary. 50 percent came from  
13 the Corporate Development funding. The other 50 percent was  
14 never budgeted in the business units that she was supposedly  
15 to work from and so, that budget overflowed into the holding  
16 company. That's the only source of funding.

17 Q That's not --

18 A So, that's entirely consistent, in my view.

19 Q But that's not what you wrote on the document you  
20 prepared to supplement your testimony, right? You doubled  
21 the figure, correct, to make it look like she was more  
22 reliant on CDP funding than she actually was?

23 A I'm afraid I have to disagree with you.

24 THE COURT: He's given his explanation. You don't  
25 have to accept it. Go ahead.

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1 MR. GOLDSHAW: Your Honor, I must, once again, ask  
2 permission to show the actual document, so the jury can see  
3 it.

4 THE COURT: No.

5 Q Did you inflate the CDP funding for Richard Hinchey by  
6 ten times the actual value of CDP funding that he had?

7 A Richard Hinchey had received ten percent funding from CDP  
8 that was proposed for 2005 and in previous testimony, we also  
9 said that there was no firm decision on CDP for 2005. And  
10 Richard Hinchey, we know, received 100 percent of his salary.  
11 So, where did the remaining money come from? It came from  
12 the holding company.

13 THE COURT: Well, the question is when were these  
14 estimates made? What makes you think that he was supposed to  
15 get ten percent and it turned out that there wasn't -- he had  
16 to get the rest somewhere else?

17 THE WITNESS: In September of 2004, that's when we  
18 proposed a budget for 2005. We had then proposed to put  
19 Richard Hinchey at ten percent. Those budgets were never  
20 fully approved, because the front company was going through a  
21 transaction. So, we did not have a firm budget going into  
22 2005.

23 THE COURT: It became 100 percent later on, is that  
24 what you're saying?

25 THE WITNESS: Well, we had the edict then from the

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1 CEO, around September or October of 2004, that there were not  
2 going to be any personnel changes. We phrased it as no  
3 hiring and no firing. So, given that we did not have a firm  
4 budget going into 2005 and that the people were going to be  
5 staying within the company until a decision was made, they  
6 received 100 percent of their salary, so, that money could  
7 only have possibly come from the holding company, itself and  
8 that's what we were trying to present.

9 Q Isn't it a fact that as recently of March this year, you  
10 provided a sworn statement that Dick Hinchey was only ten  
11 percent funded from the corporate development?

12 A So, what did the remaining 90 percent.

13 Q Is that true or not, did you provide that sworn statement  
14 in March?

15 A Yes, we did and --

16 Q What happened between March and today?

17 A -- and if you'll allow me to explain, the rest of it came  
18 from the holding company, because he was never budgeted for  
19 any part of 2005.

20 Q What has happened between March of this year and today  
21 that has caused you to change your estimate for Dick Hinchey  
22 be increasing it by ten times?

23 A Maybe the question was slightly different and we're just  
24 simply trying to present it as the best way we know how.

25 Q Was it the best way you knew how when you represented

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1 that Dick Hinchey's actual 2005 CDP funding was 100 percent  
2 in 205, on a document you created for purposes of this  
3 litigation?

4 MS. MALLOY: Objection, argumentative.

5 THE COURT: It is argumentative, he's trying to get  
6 an answer. Go ahead.

7 THE WITNESS: In March when we put in a sworn  
8 statement, we answered to a particular question and we tried  
9 to present what we knew in terms of 2005 and what was  
10 proposed for -- what was proposed for 2005. And what we are  
11 trying to do in this particular document that -- this big  
12 poster that you were representing, was to illustrate where  
13 the money actually came from. As opposed to which  
14 department, which cost center, that was the -- that they had  
15 been residing in, in 2004. The information, I have to say,  
16 again, is entirely consistent.

17 BY MR. GOLDSHAW:

18 Q Isn't it a fact that in July of this year, you provided  
19 sworn testimony admitting that you inflated the figures for  
20 Dick Hinchey by ten times?

21 A We never inflated --

22 THE COURT: Read his testimony to him.

23 Q This is testimony provided by Dr. Lau in July of this  
24 year.

25 THE COURT: 2009.

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1 MR. GOLDSHAW: 2009. Page 19.

2 THE COURT: He's being given a copy of it.

3 Q Please tell me when you've found the page.

4 A Yes, I have found the page.

5 Q "This is what this column is referring to, 2005 CDP  
6 funding, right?"

7 "Answer: Yes.

8 "Question: 2005 actual funding is in the document  
9 before you, that you provided a sworn verification to,  
10 correct?

11 "Answer: Correct.

12 "Question: And for Dick Hinchey, it says not 100  
13 percent, but ten percent, right?

14 "Answer: Yes.

15 "Question: This document inflates the CD funding by  
16 ten times, correct?

17 "Answer: Correct."

18 You did provide that testimony in July, correct?

19 A But this is not the complete statement, too. Is that  
20 that particular column, that we also, I think, said at the  
21 time, better represent the funding from holding company.

22 Q You said this is not the complete statement?

23 A I think so.

24 Q Would you like me to continue reading?

25 A Please.

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1 Q And you stop when you get to the point where you  
2 testified as to what you just said.

3 MS. MALLOY: He's badgering the witness.

4 THE COURT: Pardon?

5 MS. MALLOY: He's badgering the witness. He can  
6 testify if it's not his complete understanding.

7 THE COURT: Certainly is, go right ahead.

8 MS. MALLOY: It's not up to Mr. Goldshaw to pick the  
9 portions to --

10 BY MR. GOLDSHAW:

11 Q I'll let you pick whatever portion you want that shows --

12 THE COURT: Just go ahead. Don't make speeches, ask  
13 questions.

14 Q Dr. Lau, you referred to testimony you gave earlier. I'd  
15 like you to show me where it is, if you really testified that  
16 way in July. You've got the transcript in front of you.

17 A Well, the way I look at it is that someone received 100  
18 percent of the salary.

19 Q I'm asking you to show me where in the transcript?

20 A I'm just telling you, someone received 100 percent of the  
21 salary. We budgeted or proposed ten percent funding. Where  
22 did the remaining 90 percent come from?

23 THE COURT: We're interested in what you testified  
24 to, not answering hypothetical questions.

25 THE WITNESS: It's my recollection, sometime in

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1 June, that this -- that particular column should have been  
2 better labeled as the holding company funding.

3 Q Oh, so, you're saying it's a problem with the labeling of  
4 the column?

5 THE COURT: That's what he just said.

6 THE WITNESS: I forgot exactly where it was.

7 Q I want to be sure I understand. If there was a mistake,  
8 I want to know what it is, so I can examine you regarding it.

9 A It's holding company funding, that 2005.

10 Q And changing the column that way corrects the problem, is  
11 that your testimony now?

12 A Absolutely.

13 Q Okay. The first person listed on that document, you had  
14 listed as Eric Senderov, 100 percent actual 2005 CDP funding,  
15 correct?

16 A Mm-hmm, yes.

17 Q Isn't it a fact that in 2005, half of Eric Senderov's  
18 salary actually came from an outside company, Dow Chemical?

19 A Eric Senderov --

20 Q Is that true or not?

21 A Let me explain. Eric Senderov never worked for Dow  
22 Chemical Company. He worked for PQ. 100 percent of his  
23 salary came from PQ. Now, Dow may have provided funding to a  
24 particular project. It does not say Dow would only fund.

25 THE COURT: Well, does Dow's money contribute to

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1 CDP?

2 THE WITNESS: Dow's funding was contributing to a  
3 particular project, but that particular project was not part  
4 of the proposal in the 2005.

5 THE COURT: Would that be part of Corporate  
6 Development funding?

7 THE WITNESS: In 2004, it was.

8 Q Are you saying Dow Chemical, a separate company was part  
9 of PQ's Corporate Development funding?

10 A No. What I am saying that Dow --

11 Q That 50 percent of his salary came from Dow, right?

12 A I'm telling you, Eric Senderov did not work for Dow.

13 Q That's not my question, sir. Did 50 percent of the money  
14 supporting Eric Senderov's salary, which you listed as 100  
15 percent out of holding company funds, in fact, come from an  
16 outside company, Dow Chemical?

17 A I'm saying that Dow supported a project within PQ, to a  
18 tune of \$100,000 annual rate. That, in itself --

19 Q I'm going to read from prior sworn testimony you gave.  
20 We'll get it momentarily. I'm reading from a deposition  
21 testimony you gave, which and you understood you were under  
22 oath, at that time, right?

23 A Sure.

24 Q Page 96.

25 A Page 96.



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1 THE COURT: What's the date of the deposition?

2 MR. GOLDSHAW: That deposition was dated September  
3 10, 2008.

4 Q Are you ready?

5 A Sure.

6 Q "Question: In the period January through May, 2005, what  
7 portion of Eric Senderov's salary was funded with CD money?

8 "Answer: I would say about half of it. The other  
9 half came from the Dow funding, which we included as part of  
10 the Corporate Development."

11 In the document you prepared for litigation, you  
12 also listed Roman Wypart, correct?

13 A Yes.

14 Q And you listed his actual CDP funding as 100 percent,  
15 correct?

16 A Yes.

17 Q And you listed source documents, correct?

18 A In --

19 Q Is that where you got that?

20 A In 2005, in the proposed plan for Roman Wypart, 50  
21 percent of his funding was to come from Corporate  
22 Development. The other 50 percent was to come from Potters  
23 Industries, which is a wholly-owned subsidiary of PQ.

24 Q Half of his salary came from Potters Industries?

25 A That was the proposed plan.

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1 Q Potters Industries had nothing to do with the decision to  
2 terminate Roman Wypart, did it?

3 A Potters had a decision to decide on how much money to  
4 fund their product development effort.

5 Q Are you saying that affected the decision whether to  
6 terminate Roman Wypart?

7 A Well, at the time, in 2005, Potters also were reducing  
8 their research and development funding. And so, the money  
9 that we thought we might get to support Roman Wypart, did not  
10 materialize.

11 Q The question is, did any of that stuff have anything to  
12 do with Mr. Wypart's termination?

13 A Well, ultimately, his source of funding went away, both  
14 in Potters Industry, as well as in the Corporate Development  
15 funding. And so, that's why Roman Wypart was released.

16 Q PQ has never contended in this litigation, has it, that  
17 any decision by Potters to fund him had anything to do with  
18 his termination, has it?

19 A I think it has been our contention that funding has  
20 always been the issue.

21 Q Potters --

22 A Funding has been the issue.

23 Q I'm going to show you what has already been admitted by  
24 defendants, is PQ's official, sworn explanation for the  
25 termination of Roman Wypart. This doesn't say anything about

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1 Potters, like you just said now, does it?

2 A It may be an incomplete answer, but what's for sure is  
3 that the intent, at the time, in September, when we made the  
4 proposal to the Corporate Development, was to support Roman  
5 Wypart for 50 percent under Corporate Development money and  
6 the remaining funding was to come from Potters Industries.

7 Q You said that might not be the full answer? You see the  
8 question --

9 MS. MALLOY: He said he didn't have a chance to read  
10 it. Could you please show it to him the binder?

11 THE COURT: Okay, let's recess, at this point. Have  
12 lunch and calm down and we'll see you at 1:30 this afternoon.

13 THE CLERK: All rise, please.

14 (Court in recess 12:19 to 1:35 o'clock p.m.)

15 THE COURT: Be seated, please. I understand you've  
16 settled the case, is that right? Somebody wanted to get  
17 something on the record.

18 MR. GOLDSHAW: Yes, I thought your Honor would  
19 appreciate it if I do it outside the presence of the jury. I  
20 think, to protect the record, I need to actually formally  
21 move the admission of P-281. I understand your Honor's view  
22 on it, but I needed to make that proffer.

23 THE COURT: What is 281 supposed to be?

24 MR. GOLDSHAW: I'll make the proffer now. 281 is  
25 the document that was created for the purposes of Dr. Lau's

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1 testimony in this litigation.

2 THE COURT: Created by whom?

3 MR. GOLDSHAW: One of the questions I need to ask  
4 him is whether it was -- he said earlier, he and his  
5 attorneys, but I believe that that may be in dispute. But  
6 the point is that it's being presented for two purposes,  
7 maybe three. I guess outside the presence of the jury, I can  
8 mention that this was introduced at the prior trial in  
9 support of Dr. Lau's testimony.

10 THE COURT: What is it supposed to be?

11 MR. GOLDSHAW: It's -- we contend it's a fabricated  
12 document that he used to present to a jury in order to  
13 bolster their case. We believe that it shows that their  
14 reasons are pretextual.

15 THE COURT: Well, how do we know that this witness  
16 had anything to do with it?

17 MR. GOLDSHAW: Because he testified to this document  
18 previously, in the prior trial, that resulted in the hung  
19 jury. And his representations on this document directly  
20 contradict prior sworn statements in numerous respects.

21 THE COURT: What did he say about it at the first  
22 trial?

23 MR. GOLDSHAW: He admitted that his prior sworn  
24 statements contradicted the figures he presented in several  
25 respects.

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1 THE COURT: Why don't you refer to that testimony?  
2 I haven't heard any testimony to that effect.

3 MR. GOLDSHAW: I tried, your Honor, but you wouldn't  
4 let me show the exhibit.

5 THE COURT: You don't have to see the exhibit to ask  
6 a question, for heaven's sake.

7 MR. GOLDSHAW: Your Honor, I do not believe --

8 THE COURT: You said that he testified at the  
9 previous trial that he -- that this was incorrect?

10 MR. GOLDSHAW: That it contradicted the sworn  
11 statements he provided earlier, yes.

12 THE COURT: Well, why don't you read the testimony  
13 to him?

14 MR. GOLDSHAW: I read portions of it. I had a fear  
15 of violating your Honor's earlier order not to represent --  
16 let the jury know there was an earlier trial. I have to  
17 really tread with trepidation on that.

18 MS. EYER: Also, your Honor, the relevant testimony,  
19 without the document, is not clear at all. It is very  
20 difficult to tell what's going on without the document  
21 itself.

22 MR. GOLDSHAW: The prior testimony continually  
23 refers to the document and thus, does not make sense without  
24 the --

25 THE COURT: Well, all testimony in this trial, from

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1 the very beginning, has referred to a document. Every other  
2 word is the word document.

3 MR. GOLDSHAW: The difference is that when, in this  
4 trial, when referring to a document it was being displayed on  
5 the easel for the jury to see. They can't see this document  
6 and therefore, the reading of the prior testimony won't make  
7 sense without having them be able to look at the document.

8 THE COURT: Well, this doesn't make sense, even if  
9 you look at the document.

10 MR. GOLDSHAW: That is my point precisely. The  
11 document itself is inaccurate. It demonstrates a willingness  
12 by the part of their star witness to present false figures.

13 THE COURT: Well, first of all, is there any  
14 evidence that he, himself, prepared this document?

15 MS. MALLOY: No, your Honor, I prepared the  
16 document.

17 MR. GOLDSHAW: I would like to --

18 THE COURT: Then you're the liar then.

19 MS. MALLOY: I'm the liar. I think Mr. Goldshaw  
20 said that last time. I prepared the document. It was for  
21 purposes of summarizing these various manpower matrices,  
22 which we'll see again this afternoon for the jury. Dr. Lau  
23 testified that it was accurate. Mr. Goldshaw questioned him  
24 about a completely unrelated topic and it -- Dr. Lau said he  
25 thought it would be more accurate if the last column, that

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1 red column, was labeled holding company money. It was a  
2 demonstrative exhibit to try to demonstrate something to the  
3 jury. I'd also say, your Honor, you've ruled on this twice  
4 already.

5 THE COURT: Yes.

6 MS. MALLOY: I thought it was quite inappropriate  
7 for Mr. Goldshaw to get into it all again today.

8 MR. GOLDSHAW: Your Honor, may I respond briefly,  
9 please?

10 THE COURT: You may.

11 MR. GOLDSHAW: Thank you. Rather than describe it,  
12 I would like to read the very brief excerpt on how he  
13 testified to the document.

14 THE COURT: Precisely, why didn't you do that  
15 before?

16 MR. GOLDSHAW: "Question: This was a document  
17 carefully prepared by you and your lawyers for purposes of  
18 this litigation, is that correct?"

19 The witness answered, "Obviously, we weren't careful  
20 enough."

21 "Question: Prepared for purposes of this litigation  
22 for your testimony here today, correct?

23 "Answer: Yes."

24 That's the statement that the witness gave.

25 THE COURT: Well, where does he admit that it's

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1 wrong?

2 MR. GOLDSHAW: Throughout the examination. I had a  
3 marker, as he confirmed the inaccuracy of various figures, I  
4 x-ed it out. We admitted it into evidence at the last trial  
5 and I believe that I am entitled to show that this witness,  
6 in order to advance the position in the litigation, presented  
7 false figures. He made up the document.

8 THE COURT: Am I correct in my recollection that so  
9 far, until today, this witness has not testified in this  
10 trial?

11 MR. GOLDSHAW: In this trial, that is correct.

12 THE COURT: So, who cares whether he's truthful or  
13 not, if he's not going to testify?

14 MR. GOLDSHAW: Your Honor, this is their star  
15 witness. If he's not truthful, it's extremely important.

16 THE COURT: How do we know? They haven't called a  
17 witness yet. We're still in the plaintiff's case, for  
18 heaven's sake.

19 MR. GOLDSHAW: Your Honor, it also relates to  
20 pretext, because even if they don't call him, if I can show  
21 that they have changed their explanation over time, it  
22 undercuts the credibility of their explanation. If you tell  
23 the same story --

24 THE COURT: Had it occurred to you or your  
25 co-counsel, that we are in the plaintiff's case? That so



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1 far, all you've been doing is proving the defendant's case.

2 MR. GOLDSHAW: That's certainly not our intent,  
3 obviously. But I don't know how to respond to that  
4 statement.

5 THE COURT: Well, by -- ordinarily, the plaintiff  
6 presents its case, her case, their case. Then the defense  
7 presents their case and then, if necessary, the plaintiff can  
8 produce rebuttal. And all we've been hearing for the last  
9 several days is what your rebuttal would be if we'd ever  
10 heard any testimony from the defense.

11 MR. GOLDSHAW: Your Honor, this is our last witness  
12 and --

13 THE COURT: Good.

14 MR. GOLDSHAW: -- and that's --

15 THE COURT: Now, what precisely do you want to do  
16 with this witness?

17 MR. GOLDSHAW: What I wanted to call this conference  
18 for, precisely, was to ensure I've adequately preserved the  
19 record, because otherwise, I feel, even if it's in front of  
20 the jury, I need to formally move for the admission of the  
21 document. And I didn't want to create a spectacle, which is  
22 why I thought your Honor would appreciate if I can do it  
23 before they arrive.

24 THE COURT: If you can get somebody to identify the  
25 document as something that was prepared by this witness and

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1 counsel and that there are inaccuracies in it, that's fine.

2 But so far, we haven't heard that.

3 MR. GOLDSHAW: Well, your Honor, I can establish  
4 that right now. The question from his prior testimony, "Was  
5 this a document" --

6 MS. MALLOY: Could you please tell me the page?

7 MR. GOLDSHAW: Page 41. "Was this a document  
8 carefully prepared by you and your lawyers, for purposes of  
9 this litigation, is that correct?" His answer was,  
10 "Obviously, we weren't careful enough." And I confirmed,  
11 "Question: Prepared for purposes of this litigation for your  
12 testimony here today? Answer: Yes."

13 THE COURT: Well, it's your belief that by saying we  
14 weren't careful enough, that that is in effect, agreeing that  
15 he prepared it?

16 MR. GOLDSHAW: Yes. What was he referring to being  
17 careful about?

18 THE COURT: And that it's inaccurate, how does that  
19 establish any inaccuracies?

20 MR. GOLDSHAW: That, itself, doesn't establish  
21 inaccuracies. I have several pages of testimony going point  
22 by point, showing how the various figures were specifically  
23 contradicted by prior sworn statements by the same witness  
24 once before. And I demonstrate the inaccuracy by showing on  
25 a previous occasion, he provides sworn statements, the exact

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1 same numbers that were different.

2 THE COURT: Could you name these witnesses?

3 MR. GOLDSHAW: The witness is this same witness, the  
4 same witness.

5 THE COURT: Mr. Lau?

6 MR. GOLDSHAW: Yes, I'm sorry, let me try to be  
7 clearer. Dr. Lau provided a sworn verification in March of  
8 2009 to figures that are different than appear on the  
9 document that he participated in creating for purposes of  
10 this trial.

11 THE COURT: What does the 2009 document show?

12 MR. GOLDSHAW: The 2009 document shows the figures  
13 for various employees, of how they were funded, which is  
14 their central explanation for why they were fired.

15 THE COURT: Okay, where is that exhibit?

16 MS. EYER: That is in defendant's answers to  
17 interrogatories, I believe the specific exhibit is --

18 THE COURT: Is it an exhibit at this trial?

19 MS. EYER: It is, your Honor and I believe it shows  
20 that the numbers for several of the older employees are lower  
21 in the prior sworn answer and the numbers for several of the  
22 younger employees are higher.

23 THE COURT: All right, okay, you can certainly  
24 establish that.

25 MR. GOLDSHAW: So, may I examine the witness on the

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1 document?

2 THE COURT: Of course.

3 MR. GOLDSHAW: Thank you. In order to examine him,  
4 I obviously need to display it.

5 THE COURT: You don't have to display it yet. If  
6 you can get him to admit that these figures are inaccurate,  
7 it comes in.

8 MR. GOLDSHAW: If I can't get him to admit it, I  
9 want to impeach him, because I can prove it.

10 THE COURT: Right, right, right.

11 MR. GOLDSHAW: In order to prove it, I need to show  
12 the document.

13 MS. EYER: We can at least show it -- the witness  
14 needs to be able to see the document, certainly.

15 THE COURT: Well, sure, the witness can see it.  
16 That doesn't mean you put it up on a billboard yet. You have  
17 approximately 32 seconds to get started in doing whatever  
18 you're going to do. Let's get the jury in.

19 (Pause.)

20 THE COURT: What happened to the witness?

21 MR. ENNIS: We are getting him, your Honor.

22 MS. MALLOY: Mr. Goldshaw wanted him out of the  
23 room.

24 MR. ENNIS: And your Honor, you might want to know  
25 we are being visited by law students here this afternoon.

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1 THE COURT: That's not my fault. Glad to have you.

2 Any particular law school?

3 MR. ENNIS: Villanova.

4 THE COURT: I've heard of that.

5 (Pause.)

6 THE CLERK: All rise.

7 (Jury enters.)

8 THE COURT: Be seated, please.

9 MR. GOLDSHAW: Your Honor, I can't remember if I've  
10 identified the document and I apologize if this is  
11 repetitive. But being displayed on the easel is answer  
12 provided by PQ Corporation, under oath, the question set  
13 forth in full detail for reason or reasons why PQ eliminated  
14 Mr. Wypart's position.

15 THE COURT: Okay.

16 BY MR. GOLDSHAW:

17 Q Dr. Lau, is your explanation that Potters' funding for  
18 Roman Wypart is not mentioned in this document because PQ's  
19 official answers are somehow incomplete?

20 A What does it say in this document?

21 Q It should be before you, P-290. I will read it.

22 "Question: Set forth in full detail, the reason or  
23 reasons why PQ eliminated Mr. Wypart's position?

24 "Answer: PQ decided to eliminate from it, from the  
25 corporate holding company, which supported the research and

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1 development conducted through the corporate development  
2 program, CDP. The business units were then authorized to  
3 determine what, if any, research and development projects  
4 would continue to be funded by the business units. As a  
5 result of this process, the funding for the research, which  
6 Wypart was conducting was eliminated." That completes --

7 A That's completely correct.

8 Q Okay. And that document doesn't mention anything about  
9 Potters funding, correct?

10 A The other business units.

11 THE COURT: Talk into the microphone and keep you  
12 voice up, please.

13 THE WITNESS: Okay. The other business units, that  
14 includes Potters Industries.

15 Q Potters isn't identified there, would you agree with  
16 that?

17 A Does it not identify other business units.

18 Q The question is, to state in full detail the reasons.  
19 Are we able to identify, in full detail, the reasons without  
20 even mentioning the business unit you are now contending is  
21 responsible?

22 A As I mentioned before, the proposed funding for Roman  
23 Wypart, in 2005, was half of it was to come from the  
24 corporate development project and the other half was to come  
25 from Potters Industries. Those funding went away.

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1 Q And that's not what the official explanation says,  
2 correct?

3 A Does it not --

4 Q Right?

5 A Does it not say decisions by the business units under  
6 funding of the project, as well.

7 Q Potters isn't mentioned there, you agree with that,  
8 right?

9 A But Potters is a business unit of PQ.

10 Q That had nothing to do with the Corporate Development  
11 program, correct, Potters funding?

12 A I don't know how to answer this question, how many times.

13 Q This talks about eliminating funding from the corporate  
14 holding company, which support research and development --

15 THE COURT: Well, he can't read that from where he  
16 is sitting.

17 MR. GOLDSHAW: I'm sorry?

18 THE COURT: He can't see that.

19 Q Is it in front of you, 290? My question is, this is  
20 referring to -- conducted through the Corporate Development  
21 program. Potters funding isn't a Corporate Development for  
22 funding, correct?

23 A That's correct. But half of the funding was planned for  
24 Roman Wypart to receive from Potters Industries and that  
25 funding did not materialize in 2005.

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1 Q I just want to know if you're changing the story for why  
2 Mr. Wypart was terminated?

3 A Mr. Wypart was terminated because we did not have funding  
4 for him in the Corporate Development project and that was  
5 planned for 50 percent, at the time and from Potters  
6 Industries that was planned for the remaining 50 percent.

7 Q I'm trying to ask if you're changing the story set forth  
8 in the document of PQ's official explanation or not?

9 A I'm just recalling from my own records, of what we had  
10 planned for Roman for 2005.

11 Q You mentioned as to Bonnie Marcus, that a business unit  
12 decided not to fund part of her funding, as well, right?

13 A In 2004, Bonnie Marcus received half of the funding from  
14 one of PQ's business units named Zeolite Products and that  
15 funding did not materialize in 2005. And the other half --  
16 and she was not considered for funding in the Corporate  
17 Development project in 2005.

18 Q The name of the business unit funding, you mention was  
19 Detergent Zeolites?

20 A Zeolite Products, which is you could call it Detergent  
21 Zeolite.

22 Q Detergent Zeolite's funding is not Corporate Development  
23 money, correct?

24 A No, it is not.

25 Q I'm now going to display for you, a document that's



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1 already been admitted as P-288, it's also before you. Is  
2 this PQ's official explanation for the termination of Bonnie  
3 Marcus? "Question: Set forth in full detail, the reason or  
4 reasons why PQ eliminated Ms. Marcus' position"

5 And the sworn answer provided by PQ Corporation  
6 appears below. That doesn't mention anything about her  
7 losing any Zeolite Products or Detergent Zeolite's funding,  
8 correct?

9 A Bonnie Marcus was not budgeted for any funding in 2005.

10 Q You mentioned that part of the reason she was terminated  
11 is that she had been receiving Detergent Zeolite or Zeolite  
12 Products funding, correct?

13 A In 2004.

14 Q All right and that's not Corporate Development money,  
15 correct?

16 A It is not Corporate Development money.

17 Q And in explaining PQ's official position, would you agree  
18 and then it doesn't say anything about Detergent Zeolites?

19 A In 2005, Detergent Zeolite had determined that they would  
20 not fund any of Bonnie Marcus' time and Bonnie Marcus was not  
21 considered for funding in Corporate Development projects.

22 Q Are you changing your story as to why Ms. Marcus was  
23 terminated?

24 A She was terminated because there was no funding from  
25 Corporate Development funding and there was no funding from

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1 the Zeolite Product -- Zeolite Products business.

2 Q And you're saying that the funding with Detergent

3 Zeolite's business was part of the reason she was terminated?

4 A Should we say, in 2004, there was half of her funding

5 came from Zeolite Products. There was no funding in 2005.

6 If we could have found money from other sources, then that

7 would be different. But we could not find any funding from

8 any other sources. So, she was not budgeted in any of the

9 business units nor in the Corporate Development projects.

10 Q I'd like you to take a look at a document that I

11 questioned you on. I'm not permitted to display it on the

12 easel right now. Please turn to it, it's P-281.

13 A 281.

14 Q I understand I must question you on the document before

15 displaying it. So, we're going to need to try to describe it

16 in a way that the jury can follow along, please.

17 THE COURT: You can display it if you insist upon

18 it.

19 MR. GOLDSHAW: I would greatly appreciate that, your

20 Honor.

21 THE COURT: Go right ahead.

22 Q Do you have it in front of you, as well?

23 A Yes, I have.

24 Q Isn't it true, that this document being displayed, marked

25 as P-281, was a document that was created by you and your

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1 lawyers for purposes of your testimony in this litigation?

2 A Yes.

3 Q And isn't it a fact, looking -- I'm sorry -- let's look  
4 at the red column, which is stated, actual 2005 CDP funding?

5 A And I think we have said before that this column should  
6 have been more appropriately labeled as holding company  
7 funding.

8 Q We'll get there in just a minute. Let me first ask, do  
9 you agree that this document falsely states the figures for  
10 Dick Hinchey at 100 percent, when in fact, he was only 10  
11 percent actual CDP funding?

12 A In 2004, Dick Hinchey received ten percent funding from  
13 Corporate Development.

14 Q 2005, sir?

15 A But this is important, I think, to talk about something  
16 happened in the fourth quarter of 2004, which flow into 2005.  
17 And I think just picking on one number, in itself, doesn't  
18 tell the entire story.

19 Q My question specifically is the number that is written in  
20 this box for Richard Hinchey for actual 2005 CDP funding is  
21 100 percent. Isn't it true, that the correct number is 10  
22 percent. I'm asking specifically about this number?

23 A I'm pointing to this red column and say, if you look at  
24 this as holding company money, it is absolutely 100 percent  
25 correct. Dick Hinchey received 100 percent of his salary.

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1 That money came from the holding company.

2 Q We'll get to the holding company in a minute. If you  
3 agree that this falsely states the figures as labeled, we can  
4 move to the holding company. So, let's first establish what  
5 his document shows. Do you agree the 100 percent to Dick  
6 Hinchey is not correct for CDP funding?

7 A If you look at the red column and say it's holding  
8 company money, then it is absolutely, 100 percent correct.

9 Q I think you understand my question, right? I'm asking if  
10 the document, as it --

11 A I'm not sure you understand my answer.

12 Q We will get there in a moment. I promise, we'll get  
13 there in a moment. Let's first establish what the document  
14 shows. When the document, as it was created by you, for  
15 purposes of litigation, at the time was correct or incorrect?  
16 If you tell me it is incorrect and agree to that, we can move  
17 on.

18 A And we can agree to it if we say that red column really  
19 should have been more accurately labeled as holding company.

20 Q We don't agree with that, sir, we'll get there in a  
21 minute. I first want to know or let's do it this way,  
22 Richard Hinchey, you previously provided a sworn statement  
23 that his actual 2005 CPD funding was only ten percent, true  
24 or false?

25 THE COURT: It doesn't say that.

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1 MR. GOLDSHAW: It doesn't, your Honor and that's my  
2 point. His prior sworn statement was inconsistent with this  
3 document, that's what I'm trying to establish here.

4 THE COURT: Is there a distinction between CDP and  
5 the holding company?

6 THE WITNESS: CDP funding came entirely from the  
7 holding company.

8 Q My question again, is am I correct that Richard Hinchey's  
9 actual 2005 CDP funding was ten percent, according to the  
10 sworn statement you provided earlier? A simple question.

11 A Dick Hinchey received 100 percent of his salary in 2005,  
12 up until June.

13 Q So, you don't --

14 A That money, that money came from the holding company.

15 Q Do you not want to answer my question? Please turn to  
16 your prior sworn statement at P-218.

17 A 218?

18 Q Yes, sir. Do you recognize this as an answer that you  
19 provided a sworn verification to on March 2, 2009, correct?

20 A I don't recognize it, but you can say it is, yes.

21 Q I want you to be sure, take your time.

22 A I mean, there's a lot of documents here.

23 Q Take your time. We've been over this before, right?

24 A Mm-hmm.

25 Q You don't remember?

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1 MS. MALLOY: Objection, relevance.

2 THE COURT: Objection sustained.

3 Q Please tell me when you've had an opportunity to confirm  
4 whether that document contains an answer that you provided a  
5 sworn verification to on March 2, 2009.

6 A So, which part of this document?

7 Q Question 23 is what I'll be focusing on, just like I did  
8 last time.

9 A Okay, yes.

10 Q Okay. That number lists, for years 2004 and 2005, actual  
11 funding from the CDP for various employees, correct?

12 A That's right.

13 Q For Dick Hinchey, I'm asking you, just repeat a number  
14 that you wrote in your sworn statement, the actual 2005 CDP  
15 funding. Does this state ten percent in the document before?

16 A Yes, it does.

17 Q Thank you. Bonnie Marcus, in the document before you,  
18 actually states not 100 percent, but 50 percent, correct?

19 A Yes, that's correct. What we're trying to also -- all we  
20 are trying to also show here, in this particular -- what is  
21 it, 281 -- is that these individuals received 100 percent of  
22 the salary from somewhere and we're trying to --

23 Q Can we get past that quickly, if we get these couple  
24 question quickly, obviously, I haven't asked the question  
25 about that and I will. Just please -- the document provides

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1 a sworn verification to -- the actual 2005 CDP funding for  
2 Ken Berg, who is under age 55, is 20 percent, not ten  
3 percent, true or false?

4 A True.

5 Q For Phil Connelly, who is 47, the actual 2005 CDP  
6 funding, in your earlier sworn statement was 30 percent,  
7 that's true, correct? According to the document I showed you  
8 earlier, it's Phil Connelly at 30 percent, correct?

9 A Yes.

10 Q Okay. And now we'll get to you saying the mistake is  
11 that this should have been labeled holding company?

12 A That's right.

13 Q Let's change that. What do you want it to say?

14 A Holding company.

15 Q Holding company, the company in 2005?

16 A Yes.

17 Q Okay. Doctor, it still states the wrong figures,  
18 correct? Still inaccurate?

19 THE COURT: For whom?

20 MR. GOLDSHAW: As re-labeled by your correction, am  
21 I correct?

22 THE COURT: Wrong figure for whom?

23 MR. GOLDSHAW: For several employees on the list.

24 THE WITNESS: Who?

25 Q Is it true that for all the older employees, this

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1 document, as re-labeled, still falsehoods in place, as their  
2 actual 2004 holding company payment?

3 A How so?

4 Q Let's take them one at a time.

5 A Okay.

6 Q We talked about Eric Senderov, 50 percent of his funding  
7 came from Dow, correct?

8 A 100 percent of Eric Senderov's salary came from PQ.

9 Q Do we have --

10 A Dow provided funding to a particular project.

11 Q Let's do it this way, I'll read back the testimony.

12 Okay, sworn deposition, page 96.

13 "Question: In the period January through May, 2005,  
14 what portion of Eric Senderov's salary was funded with CD  
15 money?

16 "Answer: I would say about half of it, the other  
17 half came from Dow funding, which we included as part of the  
18 corporate development."

19 Richard Hinchey, another employee over 55, you state  
20 100 percent holding company, 2005, correct?

21 A Yes.

22 Q And at the bottom, you read the source documents that  
23 support this as Plaintiff's Trial Exhibit 259 and Defendant's  
24 Trial Exhibit 2?

25 A Okay.



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1 Q You agree with that?

2 A Okay.

3 Q This document does show Dick Hinchey at 50 percent,  
4 holding company or CD funding or anything for 2005, do they?

5 A They might have -- I'm at a loss at how Dick Hinchey  
6 received 100 percent of his salary.

7 Q I'm at a loss, too.

8 A And the --

9 Q How did you come up with that number, it's not in those  
10 documents, is it?

11 A It is perfectly clear that it came from holding company.

12 Q You read the source documents at the bottom. Now, I'm  
13 asking if you can point to anywhere, in any of those source  
14 documents, that actually confirms Dick Hinchey had 100  
15 percent --

16 THE COURT: I think we've run this into the ground.  
17 Go on to something else.

18 MR. GOLDSHAW: Okay.

19 Q Would you agree that none of the source documents show  
20 Bonnie Marcus at 100 percent holding company funding in 2005?

21 A Bonnie Marcus received 100 percent of her salary from the  
22 holding company.

23 Q My question --

24 A In 2005.

25 Q My question was about the source documents that you

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1 listed at the bottom. Do they show 100 percent or not?

2 Can you show me where they show 100 percent or will you agree  
3 that they don't?

4 A Well, let's look at the source document.

5 Q Take your time. Tell me what you, do you have any of  
6 those up there now or -- 259, Defendant's 2.

7 A Which page is it on?

8 Q Tab 259, I think you'll find that easy, because 259  
9 doesn't show any numbers, at all, so it can't be that one.  
10 That doesn't show any numbers at all, right?

11 A No, it does not.

12 Q Okay, let's look at the -- the only other source document  
13 listed in Defendant's Trial Exhibit 2. So, if you can point  
14 out where it actually shows Bonnie Marcus at 100 percent,  
15 holding company funding or CD funding?

16 A In the Exhibit 215, in 2005, the proposed funding --

17 Q We're talking actual, sir, right? The actual, I want to  
18 know if actual, any actual funding for Bonnie Marcus 100  
19 percent is shown on that document?

20 THE COURT: What document?

21 MR. GOLDSHAW: The document before you, that you  
22 referred to, Defendant's Trial Exhibit 2.

23 THE WITNESS: Because this document was a planning  
24 document, so, it does not portray actual funding.

25 Q Okay. The document does not portray actual funding.

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1 A Because this document was generated in September of 2004,  
2 that I have in front of me. This is the fourth -- one of the  
3 last page of the 215 exhibit.

4 Q Let's look at Roman Wypart, would you agree that none of  
5 the documents you list as a source document here, actually  
6 stated 100 percent holding company funding, 2005?

7 A The document that I have in front of me states that Roman  
8 Wypart was proposed to receive 50 percent of funding from  
9 exploratory.

10 Q Like an actual RIF?

11 A And the remaining 50 percent was proposed to come from  
12 Potters Industries and since Potters Industry did not put up  
13 the funding and Roman Wypart received 100 percent of his  
14 salary in 2005, it could -- the only source it could have  
15 come from is the holding company.

16 Q I'm going to ask you to focus on my question, which is  
17 where does it say that in the document described as a source.  
18 Does it state that in the document or we just have to take  
19 your word for it?

20 A Well, this is the source document, so, it does not  
21 contain all of the information.

22 Q It doesn't contain any information about Roman Wypart  
23 given 100 percent holding company funding in 2005, correct,  
24 in that document?

25 A It isn't -- the information in this source document is

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1 not complete. It was not, at the time this was generated, it  
2 was September, 2004.

3 Q I'm trying to ask you as specifically as I can.

4 A And I'm trying to answer if you -- about this document.

5 Q Okay, we're focusing on the actual question, which is  
6 does the document that you cite as a source for this exhibit,  
7 actually state 100 percent holding company funding or CDP  
8 funding for Roman Wypart?

9 A That was not the intent of this source document.

10 Q Does the document state that or not, that is the specific  
11 question. Does it say that?

12 A It only partially cites the information.

13 Q You don't want to answer my question? Does my question  
14 embarrass you?

15 A It does not embarrass me, but all I'm saying is --

16 MS. MALLOY: Objection.

17 THE COURT: Objection sustained.

18 THE WITNESS: -- that I'm trying to refer to this  
19 source document that you put in front of me and I'm telling  
20 you that this was generated back in September, 2004 and it  
21 does not contain all of the information that is being  
22 presented there in terms of 2005 actual.

23 BY MR. GOLDSHAW:

24 Q Can you or can you not point to 100 percent Roman Wypart  
25 in the document. We'll try it one more time.

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1 But withdrawn, I'm going to represent that the  
2 document does not show 100 percent, do you disagree and if  
3 so, can you point to it?

4 A This particular source, this source document is not a  
5 complete, does not represent all the information that's being  
6 shown there.

7 Q Now, where is that (inaudible). So that, for all the  
8 employees terminated over 55, we've reviewed those now, so,  
9 they are actual 2005. And failing on this, is your  
10 contention that they were terminated because they didn't have  
11 actual funding in 2005 or 2004, right?

12 THE COURT: What's your question?

13 MR. GOLDSHAW: Are you contending the termination  
14 was based on whether they had funding, actual funding, for  
15 2004 or 2005?

16 THE CLERK: They were employed in 2004.

17 Q That's not when they were terminated.

18 A They were terminated in May of 2005.

19 Q And whatever decisions were made were based on where the  
20 actual funding came from, not their proposed, which was never  
21 accepted, right?

22 A The proposed was never accepted, that was correct.

23 Q The documents that you listed as source documents,  
24 actually state that Phil Connelly was 30 percent CDP funded  
25 and the CDP funding came from the holding company, correct?

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1 A Yes.

2 Q So, this is too low for the younger employees and the  
3 same is true for Ken Berg, who is listed at ten percent, but  
4 in fact, he got at least 20 percent holding company funding,  
5 because 20 percent is CD alone, right?

6 A I don't understand your question.

7 THE COURT: Nobody else does. Terminate your  
8 cross-examination of this witness in approximately five  
9 minutes.

10 MR. GOLDSHAW: Will do.

11 Q I will try to end it with this. Only CDP funding came  
12 from the holding company, correct?

13 A Yes.

14 Q And the document before you states that Ken Berg's CDP  
15 funding was 20 percent, correct?

16 A It was proposed to be 20 percent.

17 Q Actual, I'm talking. Document 218 shows actual, right?

18 A Ken Berg. It was proposed to be for 20 percent. The  
19 2005 project proposals were never approved. So, we assume  
20 that it was continued to be the same as in the 2004 level.  
21 There is -- there was a time period from when the company  
22 announced that it was going to be sold, from September, 2004  
23 to May of 2005, there was a time of uncertainty, projects  
24 that were proposed were not formally approved. And so, they  
25 would continue as if things were allowed, but not proof.

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1 Q You know what, I'm going to take that as no, too. I  
2 think we've got the point of it in.

3 MR. GOLDSHAW: I'm prepared to end my  
4 cross-examination -- my examination, at this point.

5 THE COURT: That's good, is there anything further  
6 of this witness?

7 MS. MALLOY: Not at this time, your Honor.

8 THE COURT: You may step down. Thank you, sir.

9 THE WITNESS: Thank you.

10 MR. GOLDSHAW: Your Honor, subject to the formal  
11 motion to admit various documents, which I understand can be  
12 done later, we are prepared to rest our case in chief.

13 THE COURT: You may proceed with your testimony.

14 MR. ENNIS: And your Honor, we would, at this time,  
15 make a motion and a --

16 THE COURT: The usual motion will be taken under  
17 advisement.

18 MR. ENNIS: Thank you, your Honor.

19 (Pause.)

20 DIRECT EXAMINATION

21 BY MS. MALLOY:

22 Q Do you work for PQ Corporation?

23 A Yes, I do.

24 Q Here's an important question, what does that stand for?

25 A What does that stand for? It's a -- PQ is a very old

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1 company, almost 180 years do.

2 THE COURT: What does PQ stand for?

3 THE WITNESS: Oh, Philadelphia Quotes or it used to  
4 be.

5 Q Could you please tell us about yourself and your  
6 education?

7 A I was born in Hong Kong. I lived in --

8 THE COURT: Please talk into the microphone and keep  
9 your voice up.

10 THE WITNESS: Okay. I went to England in 1967. I  
11 was educated there. I received a Bachelor's Degree in  
12 Physics and also a Ph.D. in physics, also from the University  
13 of Warwick in England. Came to the states in 1982. I worked  
14 at UCLA for about two and a half years. Then I joined W.R.  
15 Grace for about 12 years and then I joined PQ in 1996 to head  
16 their exploratory research effort.

17 Q And what does exploratory research effort mean when you  
18 joined PQ?

19 A What that meant was that, at the time, the PQ board was  
20 concerned about future growth of the company and so, they  
21 wanted to start an initiative, which might have the  
22 opportunity or the potential to change the future direction  
23 of the company.

24 Q And what was your title when you began at PQ, your first  
25 title?



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1 A I was the Exploratory Research Manager.

2 Q And did you have any -- what was your next title?

3 A In 1998, I was promoted to become the Vice President of  
4 Research and Development.

5 Q And who did you report to as Vice President of Research  
6 and Development?

7 A I reported to then the CEO, a fellow by the name of Dick  
8 Kelso.

9 Q And did somebody succeed Mr. Kelso as CEO?

10 A Yes, Mr. Stan Silverman succeeded Dick Kelso in the year  
11 2000.

12 Q Could you please explain a little bit about what the  
13 research and development unit at PQ did, prior to the lay-  
14 offs at issue here?

15 A We have a research lab in Conshohocken. This is really  
16 the corporate research center. I had the responsibility for  
17 about, let's say, in 1998, we had roughly about 100 people  
18 working on site and by the time we were into 2005, roughly  
19 between 55 to 60 people. And this represented the -- all of  
20 the business unit have a presence in Conshohocken and we do  
21 product development for all of the businesses.

22 Q And about how many people worked at PQ outside of R&D?

23 A The company, at the time in 2005, maybe around just  
24 slightly under 2,000 employees.

25 Q And what was the role of research and development at PQ?

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1 A Our role was to look at -- provide technical support, to  
2 develop new products. And because, ultimately, PQ is a  
3 manufacturing company, we sell products. That's how we make  
4 money.

5 Q Could you explain how the Corporate Development program  
6 came about?

7 A Yes, this really was captured in a document by Stan  
8 Silverman, then the CEO, in July of 2001. And in his mind,  
9 the Corporate Development had about -- had five key elements.  
10 The first of that was that there would be 100 percent holding  
11 company funding. And the second one is that they would be  
12 more market oriented as opposed to more technology oriented,  
13 which was the exploratory research effort that I headed. And  
14 so, this is -- the projects then to be more market oriented,  
15 the third key element, was that they would be run by or  
16 managed by the business units. And there would be a CD  
17 committee, Corporate Development committee, that would then  
18 select the projects. And then we would also have regular  
19 review of these projects to see whether are progressing in  
20 the right direction, et cetera. And each project really, in  
21 a way, looks at three phases.

22 The initial first phase is that of exploring  
23 feasibility and once feasibility has been confirmed, then it  
24 moves to the second phase of the scale up, can you do more of  
25 the same. And then it goes to a final phase of

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1 commercialization and in this commercialization phase, it's  
2 important to think in terms of money in that, when the  
3 project becomes cash neutral, meaning that revenue coming in  
4 from selling product, exceed that of the project expenses.  
5 Then the project we call, we would call it, it graduated and  
6 then it would then be transferred to the business units  
7 proper.

8 Q And was the Corporate Development program just a part of  
9 the bigger R&D unit?

10 A It's roughly about ten percent of the entire company's  
11 effort.

12 Q And what was the reason why Corporate Development would  
13 be funded by the holding company?

14 A The reason is that, as we go through say 2009 and as an  
15 example, there's economic downturn, businesses have downturns  
16 and Stan Silverman, at the time, was concerned that because  
17 of any particular business cycle, that there would be  
18 downturn and that the business units would terminate funding.  
19 Therefore and he wanted to have a more sustainable  
20 development effort that can weather through the downturns and  
21 so, his concept was to have it funded out from the holding  
22 company.

23 Q How was research and development, that was not in the  
24 Corporate Development funded?

25 A They were funded directly by the business units

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1 themselves and so, each business -- or the key business  
2 manager would then determine what kind of level of product  
3 development effort that they can afford each year.

4 Q Could you tell us about the three phases of Corporate  
5 Development projects, please?

6 A The three phases, initially, is that of a combination of  
7 working in the lab, you know, doing tests on a much smaller  
8 scale. Some exploratory work in terms of potential markets,  
9 whether the product that is being considered would be  
10 receptive by consumers and so on.

11 And then, in the second phase, this would be now can  
12 you do more of that same thing if this product can be made in  
13 the test tube, now can you make it in ton or thousands of ton  
14 quantities? So, those are separate, different kind of  
15 questions.

16 And then, in the final phase, is that of how do you  
17 now sell, you know, find the customers to sell to.

18 Q Was there any review program associated with Corporate  
19 Development projects?

20 A Yes, initially, in the beginning, in 2002, when the  
21 projects first really took off, the projects were reviewed  
22 once every quarter by the Corporate Development committee and  
23 this then consisted of the CEO, Stan Silverman, the Chief  
24 Financial Officer of the company and the heads of the  
25 business units. And then these are the people who would then

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1 review these projects and along with me, to then decide  
2 whether the appropriate progress is being made, are the  
3 projects being managed properly, is it funded appropriately.

4 Q And what was your role or title with respect to the  
5 Corporate Development program?

6 A I was the manager of the Corporate Development project  
7 and my role was to pull together the technical resources to  
8 decide which projects have merits, how we should man them,  
9 how we -- how much budget to allocate to each particular  
10 project.

11 Q And did you have responsibilities as the Vice President  
12 of R&D, other than the Corporate Development program  
13 administrator?

14 A For the other parts of the businesses, I also have  
15 responsibility in terms of the projects that were being  
16 worked on, the manpower and also budgets.

17 Q I'm showing the witness, Defendant 1. Could you please  
18 identify that?

19 A This document is from Stan Silverman, the CEO, July, 2001  
20 titled Corporate Development Program.

21 Q If you could just highlight the first two paragraphs,  
22 please? Does the second paragraph of this memo accurately  
23 set forth, in summary form, the Corporate Development  
24 program?

25 A Yes, this concentrate on new product and markets within

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1 our current businesses, yes.

2 Q And does this document, that's been marked as Exhibit --  
3 Defendant Exhibit 1, is that sometimes referred to as the  
4 Corporate Development charter?

5 A That's right.

6 Q How did people get assigned to the Corporate Development  
7 group?

8 A Well, when developed the projects, then we say, well,  
9 what do these projects need? What kind of talents do we need  
10 in order to appropriately progress --

11 Q If you can just make sure you're talking into the mike,  
12 please.

13 A Okay, if we can then -- so, once we looked at the project  
14 that had potential to be approved, then we looked at the  
15 talents that are needed in order to make sure we can drive  
16 these projects forward. And that's how we then determined  
17 people working on these projects.

18 Q How did Bonnie Marcus come into the Corporate Development  
19 group?

20 A I started working with Bonnie really on a close day to  
21 day basis starting in 2001. And so, she and I had really  
22 been working on the Corporate Development program proposal  
23 right from the beginning. And her role was to, also to  
24 organize the research staff in terms of their meeting  
25 together, defining project goals and also, then looking at

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1 potential markets.

2 Q And do you recall when Ms. Marcus came into the Corporate  
3 Development group?

4 A My recollection is that she started receiving funding  
5 from Corporate Development projects starting in 2002 and that  
6 was around 50 percent time.

7 Q Okay. And at that point, who funded the other 50 percent  
8 of Ms. Marcus' salary?

9 A The remaining 50 percent came from Zeolite  
10 International. That's one of the joint venture companies  
11 within PQ.

12 Q Who was responsible for the Corporate Development program  
13 budget?

14 A I was.

15 Q And could you explain your role in the budget?

16 A My role here is that once we decided on which projects to  
17 work on and the number of people whom we can put on the  
18 project. Then we start allocating their time, is it ten  
19 percent of the year or is it 50 percent or 100 percent? And  
20 we also have then to budget in their salaries, their  
21 overhead, meaning the health insurance plan, the pension, et  
22 cetera. And then all of the laboratory support, travel, lab,  
23 office, utilities, then we start putting all of that  
24 together. In general, it costs roughly between \$200,000 to  
25 \$250,000 to put a man year together.

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1 Q And what is a man year?

2 A A man year is really the time that the person spent in  
3 the whole year.

4 Q I'm handing the witness Defendant's Exhibit 3.

5 A Thank you.

6 Q Could you please identify that document?

7 A This is manpower matrix for 2002 Corporate Development  
8 budget. This is really a concise way of showing who's really  
9 working on what project and for how much of their time.

10 Q Let me stop you for a second, just for ease of reading,  
11 if you could highlight, please, Colleen, from the first  
12 column, maybe over to Thompson's name. Is this an actual  
13 document that you prepared?

14 A Yes.

15 Q And what is the title of it?

16 A This is 2002 Corporate Development Manpower Allocation  
17 Budget.

18 Q And when was it prepared?

19 A Typically, I would prepare that around September of 2001.

20 Q Could you explain to us how you would read this chart?  
21 Let's start with the left-hand column, Corporate Development  
22 Projects.

23 A So, on the left-hand column then, it lists out the  
24 different projects that we were proposing to the CD committee  
25 for funding. So, in this case, the first project is entitled



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1 TSPQ and then the next one, MMA and then the third one, wood  
2 preservation and then intelligent highway and so on.

3 Q And how -- what does this document show?

4 A So, what this document then show is that there is a  
5 short, few words in terms of the project description itself.  
6 The technology area --

7 Q They're short words to you, right?

8 A Short words to me and technology area within what type of  
9 area that we're dealing with. And then it begins to list out  
10 on the top column, Lau, Hu, Marcus, Thompson, the  
11 individuals. And then the fraction of their man year working  
12 on these particular projects.

13 Q Okay, let's just use for illustration, the column with  
14 Ms. Marcus' name?

15 A Yes.

16 Q Could you explain to us what those figures mean? How  
17 would you interpret this?

18 A Okay, in the case of Marcus, she would then be 20.2,  
19 which is 20 percent on TSPQ, .1 to 10 percent on MMA project,  
20 .1 to 10 percent on wood preservation, nothing on intelligent  
21 highway and then 10 percent on layer silicate and adding up  
22 to 50 percent, .5 of her man year.

23 Q And .5 of her man year came from Corporate Development  
24 funding, is that correct?

25 A That's correct.

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1 Q Okay. Handing the witness Defendant's Exhibit 2.

2 A Thank you.

3 Q This is a multi-page document, could you tell us what it  
4 is?

5 A This is, once again, a manpower matrix or a manpower  
6 allocation budget for 2003, 2004 and 2005.

7 Q Okay, let's look at 2003 for now and Colleen, if you  
8 could please highlight up to Mr. Thompson, again? Are the  
9 Corporate Development projects identified on this document,  
10 the ones that actually were proposed to receive funding?

11 A Yes.

12 Q And using yourself for an example, could you explain what  
13 this 2003 allocation budget illustrates?

14 A Now, in this case, in 2003, these proposed project were  
15 approved, so, they became the actual projects. So, as you  
16 can see under the name Lau, that's for me, the total time  
17 then is 25 percent, .25 and so, I split my time then amongst  
18 the different projects, TSPQ at 5 percent, MMA at 10 percent,  
19 wood preservation at 5 percent and layer silicate at 5  
20 percent.

21 THE COURT: Could I ask, where were these various  
22 projects taking place, the work on them?

23 THE WITNESS: The work on these projects were taking  
24 place primarily in terms of the lab scale, in Conshohocken.  
25 Wood preservation, as an example, where we, at some point in

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1 time, scale up, those were actually to preserve wood using  
2 sodium silicate. And some of them went to field testing and  
3 went as far as Hilo, Hawaii, as an example.

4 Q And the column next to your name is you, Hu?

5 A Hu.

6 Q And who is Hu?

7 A Dr. Hu, she was a scientist working in then exploratory  
8 research department, which has a department number of 458900  
9 and she was spending 30 percent of her time.

10 Q And this shows .1, ten percent of a man year assigned to  
11 the MMA project?

12 A That's right and then 20 percent on the wood preservation  
13 area.

14 Q So, would it be accurate, according to this document,  
15 that Dr. Hu was assigned 30 percent of her time was funded  
16 through Corporate Development money?

17 A That's right.

18 Q And where did the rest of Dr. Hu's funding come from?

19 A The rest of her time came from the zeolite -- or no, the  
20 silica gel business itself.

21 Q Why do people show up in these budgets as different  
22 amounts of time?

23 A Well, it really depends on the demands of the projects.  
24 Sometimes, it does not need an entire person or they have  
25 sufficient, you know, talent to be able to spread their work

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1 over different projects and different businesses.

2 THE COURT: Am I correct in my assumption that this  
3 is simply a budget arrangement?

4 THE WITNESS: Yes, that's absolutely correct. This  
5 is a budget arrangement and this is what we propose for  
6 approval and we, as we go into the actual year itself, it  
7 provides a guideline for the scientists to decide on how much  
8 time they should be spending on each particular --

9 THE COURT: So, am I correct in assuming that they  
10 don't punch a time clock for the amount of time they spend?

11 THE WITNESS: You are absolutely correct. They do  
12 not punch a time clock, but this is really just a rough order  
13 of magnitude to guide them.

14 Q If you could turn to the following page of Exhibit 2,  
15 please? And what does the second page show?

16 A The second page shows the 2004 --

17 THE COURT: That's a very fine print, that's what it  
18 shows.

19 THE WITNESS: Yes. 2004 manpower allocation budget  
20 itself.

21 Q And the document that is in your hand is a photocopy of a  
22 budget you actually prepared?

23 A Yes.

24 Q At the time?

25 A Yes. And this time, I would normally have then prepared

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1 it in around September of 2003.

2 Q Okay, hold on a second, so we can get this a little  
3 bigger, so people could see. Are you able to highlight,  
4 enlarge all the way up to Berg, does that work? Okay.

5 I'm sorry, you were describing what 2004 was?

6 A Yes, in 2004, now, these particular programs that we list  
7 on the left-hand column, those projects were all -- they were  
8 actually approved by the CD committee themselves and so, this  
9 document then really is a good budgetary guideline for what  
10 happened in 2004.

11 Q And would this be accurate as to what, in fact, were CD  
12 projects in 2004?

13 A Yes.

14 Q And you would -- you would read this page the same as  
15 we've already described?

16 A That's right.

17 Q And Berg, is that Ken Berg?

18 A That's right.

19 Q And could you describe why he is listed as .1 man year?

20 A Ken Berg is a biochemist and we, at the time, assigned  
21 him ten percent of moldicide (ph) project, because we felt  
22 that he had the necessary skills to help us move this project  
23 along in demonstrating potential efficacy in zeolite.

24 Q While we're looking at this page, could you just tell us  
25 briefly, what is TSPQ, in lay terms.

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1 A Oh, in lay terms. Well, this is a particular type of  
2 zeolites and this project was a joint project with the Dow  
3 Chemical Company, working with PQ. Dow Chemical Company has  
4 a great interest in this material because it could lead to  
5 essentially a revolutionary change in the way they make  
6 propylene oxide. However, Dow is a competitor to Shell  
7 Chemical Company and Shell Chemical Company owns 50 percent  
8 of Zeolist International, the other 50 percent is owned by  
9 PQ.

10 So, Dow, at the time, did not want to have this  
11 project within Zeolist International, because they were  
12 concerned that there could be potential information leakage  
13 from Zeolist International back to Shell. And so, but they  
14 were happy enough with the PQ side that they were willing to  
15 fund us, to do work within PQ itself.

16 Q And in lay terms, what was the wood preservation project?

17 A Wood preservation project is that some of you may have  
18 outdoor lumber or wood decking that has copper chromium  
19 arsenate as a --

20 Q That's why I said lay terms.

21 A -- it is what we call CCA, it is a very toxic compound to  
22 prevent insects from eating it up. And so, there was a  
23 potential change of government regulation abandoning CCA  
24 around this time frame and we were then looking to see if we  
25 could use PQ sodium silicate as a substitute for these very

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1 toxic materials.

2 Q And what is, briefly, moldicide?

3 A Moldicide, as I mentioned before, we had observed, at the  
4 time, potential -- that material that's been impregnated with  
5 our zeolite material, seemed to have much less mold growth  
6 than material that did not. So, we wanted to explore what  
7 that meant. Could we reproduce the results? Could it, you  
8 know, could it be confirmed, that was the moldicide.

9 Q And how about 4-A liquid?

10 A 4-A liquid, 4-A zeolites is really the builder that goes  
11 into a box of Tide detergent. A building meaning that it  
12 picks up calcium and magnesium and is a water softener. And  
13 as all of us know, as you go around to the supermarket  
14 shelves, is that powder laundry detergent has been declining  
15 in market share relative to liquid laundry. And so, we  
16 thought if there was a way for us to incorporate our zeolite  
17 product into liquids, then we would then stop the decline in  
18 our market share in powder laundry detergent.

19 So, the way that we thought we would tackle this was  
20 to make the particles small enough that they could suspend in  
21 liquid. So, 4-A is really a description of the zeolite  
22 material itself and liquid meaning that you could go into a  
23 liquid laundry detergent.

24 Q In 2004, what percentage of Ms. Marcus' funding, total  
25 funding came from Corporate Development money?

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1 A In this, as its shown here, is 50 percent came from  
2 Corporate Development funding.

3 Q And how about Dr. Senderov, same question.

4 A 100 percent.

5 Q Reggie Thompson?

6 A 100 percent.

7 Q You'll have to go to the other half. Mr. Wypart?

8 A Mr. Wypart, 100 percent.

9 Q What time of year were the Corporate Development reviews?

10 A Typically, we would be around September of each year,  
11 that's when we go through our annual budget and then we try  
12 to schedule another one, typically, around March, April time  
13 frame.

14 Q Was there a Corporate Development review in the fall of  
15 2004?

16 A Yes, there was.

17 Q Could you please tell us what happened at that review?

18 A In this review then we present our 2005 proposed budget  
19 and there were a number of projects that were presented for  
20 funding. And normally, at the end of each particular review,  
21 then we would get the steering committee will meet behind  
22 closed doors to decide which projects will be funded, which  
23 projects will not be funded.

24 Q And was Ms. Marcus on that steering committee?

25 A She was not.



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1 Q Were you on the steering committee?

2 A Yes, I was.

3 Q And what happened at the steering committee in the fall  
4 of '04?

5 A In that committee meeting, essentially, we did not get  
6 the approval that we were seeking for all the projects being  
7 proposed.

8 THE COURT: I'm sorry, approval from whom, Mr. Lau?

9 THE WITNESS: From the steering committee.

10 THE COURT: Who else was on the steering committee?

11 THE WITNESS: On the steering committee was the CEO,  
12 Stan Silverman, the Chief Financial Officer, Bill Levy, the  
13 head of Potters Industries, Gerry Sheridan, Michael Imbriani,  
14 who was the head of the chemicals business and Michael  
15 Imbriani had also invited Colleen Delmonte into the meeting,  
16 as well as Rosalind Kutchins, who had worked within the  
17 chemical business.

18 Q Do you know why the funding was not approved for the CD  
19 projects in the fall of '04?

20 A Not at that particular moment in time.

21 Q At some point, did you learn that?

22 A Yes, at some point, I did.

23 Q And what was the reason that you learned?

24 A Towards the -- towards the end of September, 2004, then  
25 the company announced that it would up for sale. And so, at

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1 that point, it was then clear to me that the reason why we  
2 did not get approval was that the company was up for sale and  
3 then, really funding of the Corporate Development project,  
4 itself, would then be left to the future owners of the  
5 company.

6 THE COURT: May I inquire, did the steering  
7 committee, was it a formal meeting, were minutes kept and  
8 that sort of thing?

9 THE WITNESS: It was not that formal. We met and  
10 normally, then I will, at the end of it, announce to my group  
11 whether projects were funded or not. But there were no  
12 formal minutes being kept for that meeting.

13 Q What projects were proposed by you to be -- Corporate  
14 Development projects proposed by you to be funded for the  
15 year 2005, right?

16 A For the year 2005, we had TSPQ, we had wood preservation,  
17 moldicide, polymer wood composite, 4-A liquid, Starlite, this  
18 is a Potters project, government relationship, that was a  
19 Potters project, surface business, that was another Potters  
20 project, Polymer additives and conductives, the letters were  
21 all Potters projects.

22 Q Did you communicate to Ms. Marcus the decision of the  
23 steering committee?

24 A Yes, I did.

25 Q Let's talk about Ms. Marcus. What was her role in 2004

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1 on the Corporate Development projects?

2 A She provided help for me to coordinate project activity,  
3 you know, to help manage the individual projects,  
4 particularly those and in fact, only those in the chemicals  
5 area, dealing with the zeolites and primarily in zeolites.

6 Q I'm handing the witness Exhibit 13.

7 A Thank you.

8 Q Can you highlight the text part of it, above where it  
9 says, Roz. Could you please identify this document, Dr. Lau?

10 A Yes, this is an e-mail from Rosalind Kutchins to me, on  
11 September 10, 2004.

12 Q Can you put that in perspective with the steering  
13 committee meeting?

14 A The steering committee took place the day before, on the  
15 9th of September, 2004. And this was a -- the title of this  
16 is regarding funding.

17 Q And could you, please, describe what Ms. Kutchins was  
18 communicating to you?

19 A The gist of this was that she was saying -- she  
20 apologized for missing each other and that they had reviewed  
21 the needs and they did not feel that Bonnie Marcus was needed  
22 in the Corporate Development project, because they are able  
23 to manage it themselves.

24 Q At this point, did Ms. Marcus have any funding from Ms.  
25 Kutchins' group?

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1 A She had her -- at this point, in 2004, 50 percent of her  
2 funding came from zeolite products, which was Roz Kutchins  
3 had responsibility for.

4 Q And where in 2004, did the rest Ms. Marcus' funding come  
5 from?

6 A The rest of it came from the Corporate Development  
7 project.

8 Q And if you could describe for us, what was going on in  
9 the PVC market, at this point?

10 A At this point, in the PVC area, we had already a number  
11 of product in hand, that was being sold and Roman Wypart  
12 provided technical support to help customers use these  
13 materials. So, the projects were actually already fairly  
14 well under way and we were selling reasonable quantities of  
15 it.

16 Q And PVC was something in Ms. Kutchins' line of business,  
17 is that correct?

18 A Yes, that's correct.

19 Q And was the detergent zeolite also Ms. Kutchins'  
20 business?

21 A Yes.

22 Q And what was communicated to you regarding funding for  
23 detergent zeolites in this e-mail?

24 A In this e-mail, in 2004 time frame, a very key  
25 ingredient, what we call ATH, is a aluminum trihydrate, is a

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1 very key ingredient to make zeolite material. The prices for  
2 ATH was shooting up close to doubling, if not tripling, in  
3 2004. And so, part of Roz Kutchins' concern was that with  
4 this rising raw material cost, she was going to be limited in  
5 her ability to fund research, R&D.

6 Q Okay. The second paragraph, I guess, the third paragraph  
7 of this e-mail, having spoken with the plants and business  
8 managers, we have agreed that we need to maintain our funding  
9 of the process/synthesis, Dick, Eric and Phil portion of the  
10 projects, but could sacrifice the market development effort  
11 at R&D, taking on that responsibility within the business.  
12 Who are Dick, Eric and Phil?

13 A Dick is Dick Hinchey. Eric is Eric Senderov and Phil is  
14 Philip Connelly.

15 Q And were all of those three people employed in R&D?

16 A Yes, they were.

17 Q And the paragraph I just read, what did that mean to you  
18 in terms of R&D?

19 A What that meant was that the business, at that moment in  
20 time, was willing to sustain the technical effort in  
21 synthesis and process development. So, the scientists, Dick  
22 Hinchey, Eric Senderov and Phil Connelly, they were willing  
23 to provide continued support. And where they were not  
24 willing to provide support was in the market development  
25 area, that meant funding for Bonnie Marcus.

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1 Q Okay. The next paragraph, I suggest that Dick and Phil  
2 take over the portion of funding that supports detergent  
3 zeolites in Korea and Thailand. They are both greatly  
4 respected by both groups and have offered excellent support.  
5 What did that mean to you in terms of your R&D unit?

6 A What that meant is that Dick and Phil were doing great  
7 work for our businesses in Korea and Thailand. And that they  
8 will continue to provide funding, at that moment in time.

9 Q And I think we already discussed PVC. So, the last  
10 sentence of this e-mail from Ms. Kutchins, Defendant Exhibit  
11 13, reads, We can discuss further next week, but my mind is  
12 made up. Unfortunately, we have to make a tough decision and  
13 drop support of Bonnie, Rome and Erin. Bonnie refers to  
14 Bonnie Marcus?

15 A Yes.

16 Q And Rome is Roman Wypart.

17 A Roman, I think that was a typo there.

18 Q Okay and who is Erin?

19 A And Erin is Erin Fisher, she, at that point, was a  
20 technician. She reported in to Roman Wypart.

21 Q And what did that conclusion by Ms. Kutchins mean in  
22 terms of your role as the vice president of R&D here?

23 A Well, what that meant was that the zeolite products  
24 business was not willing to support funding for Bonnie Marcus  
25 and the other efforts that they were happy to continue to

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1 provide support was in the process and synthesis area, Dick  
2 Hinchey, Eric Senderov, Phil Connelly and Erin Fisher and  
3 Roman Wypart.

4 Q Did you prepare a proposed Corporate Development budget  
5 for 2005?

6 A Yes.

7 Q And is that the last page of Defendant's Exhibit 2?

8 A That's right.

9 Q Can you go over to, maybe the end of Berg, if that fits?  
10 Could you, please, describe for us your proposed budget. Why  
11 was it only proposed?

12 A This was proposed on September 9, 2004 and at the end of  
13 this presentation and we met in closed session with the  
14 Corporate Development committee, they did not give us full  
15 approval. They did not give us any approval.

16 Q And the page that we're looking at here, when did you  
17 actually prepare that?

18 A It would have been sometime before the committee meeting.

19 Q And was Ms. Marcus proposed to have any Corporate  
20 Development funding for the year 2005?

21 A Oh, in this one, actually, I have to correct myself, this  
22 was actually amended after the meeting. Sometime after the  
23 September 9th.

24 THE COURT: Is this the amended version or the  
25 original version?

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1                   THE WITNESS: This is the amended version. In the  
2 original proposal, Bonnie Marcus, we had proposed time for  
3 her.

4       Q     And why did that change?

5       A     And that was the result of after the presentation on  
6 September 9th, that they basically said, you know, we think  
7 Bonnie's role could be fulfilled by the business units  
8 themselves.

9       Q     In your proposed manpower allocation budget, as amended,  
10 that you're looking at, was there any Corporate Development  
11 funding proposed for Ms. Marcus?

12      A     No, there was not.

13      Q     How about Mr. Wypart?

14      A     Mr. Wypart, at this stage, we had 50 percent funding  
15 proposed for Roman Wypart and the other 50 percent, we had  
16 planned on to come from Potters Industries.

17      Q     Okay. How about Dick Hinchey, proposed for 2005?

18      A     For Dick Hinchey, Dick's case is a little bit different,  
19 in that around the third quarter of 2004, he had approached  
20 me regarding potential retirement. And at that point, I  
21 said, well, there is, you know, things going on in the  
22 company, at the moment. Why don't we defer this particular  
23 decision. And so, we had then proposed in this particular --  
24 we had actually then taken him out of the 2005.

25      Q     Proposed budget?



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1 A Proposed budget.

2 Q Okay. Now, you testified that you learned in the fall of  
3 2004 that the company would be up for sale. Did that have  
4 any impact on your Corporate Development budgets or  
5 proposals?

6 A Yes, it did.

7 Q Could you please describe that?

8 A Basically, it meant that we did not have a decision on  
9 funding of the Corporate Development proposals that we  
10 presented.

11 Q Exhibit 40. Could you please identify this?

12 A Yes, this is an e-mail from me to the Corporate  
13 Development steering committee.

14 Q And what is the date, sir?

15 A And the date on this, let's see, I'm trying to find it.  
16 Ah, it's September 23, 2004.

17 Q And what is this?

18 A This is a Corporate Development project summary and this  
19 essentially, after the September 9, 2004 meeting, I was asked  
20 to revise my budget based on the discussion there. And so,  
21 we came up with a new proposal and this time, then, we had  
22 then eliminated Bonnie Marcus' participation in this -- in  
23 the Corporate Development project.

24 Q So, the second paragraph reads, as the plan stands and in  
25 view of other budgetary pressures, Bonnie Marcus and Dick

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1 Hinchey will not be involved in the 2005 CD program.

2 A That's right.

3 Q And that's reflected on your proposed 2005 budget, which  
4 was Exhibit 2, is that correct?

5 A That's right.

6 Q That we just looked at?

7 A That's right.

8 Q Roman Wypart, a polymer processing expert, has been added  
9 to support both the wood polymer composites and glass bead  
10 projects. Is that also reflected on your 2005 amended  
11 budget?

12 A That's right.

13 Q And Eric Senderov's time distribution has been shifted  
14 more to Nano-A to compensate for Dick Hinchey's absence. Is  
15 that also reflected on your proposed budget?

16 A That's right. And just to add that Nano-A also is  
17 synonymous with a 4-A liquid, small particle size A.

18 Q That's a laundry detergent?

19 A That's right.

20 Q Exhibit 6.

21 A Thank you.

22 Q Could you please identify this?

23 A This is a public announcement that was regarding PQ  
24 Corporation to examine strategic alternatives. That  
25 basically meant the company was putting up itself for sale.

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1 Q Did the fact that the company was for examining strategic  
2 alternatives, beginning on or about September 20, 2004, have  
3 any impact on the personnel decisions that were in front of  
4 you?

5 A Yes, it did.

6 Q Please describe that?

7 A When this and shortly after this was issued, our CEO,  
8 Stan Silverman, passed along a directive which was that there  
9 were going to be no hiring or firing of company employees  
10 until that the transaction is complete.

11 Q And what did that mean for the people who had been  
12 assigned to Corporate Development?

13 A What that meant was that we were, in essence, in a  
14 holding pattern until the company is sold. So, we could not  
15 do anything in terms of people, whether they were funded or  
16 not funded.

17 Q Exhibit 18. Could you please identify this?

18 A Yes, this was an e-mail, there's two parts to this. On  
19 the bottom part is from me to Stan Silverman, on November 9,  
20 2004. And I just wanted to confirm with him his directive  
21 that there were going to no personnel action to be taken  
22 until the company is sold. And he replied on the day after,  
23 to confirm that that is indeed correct.

24 Q What would have happened to Ms. Marcus' employment in  
25 November of 2004, if it were not for this directive by Mr.

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1 Silverman?

2 A In, if there's such a thing as a normal year, in normal  
3 circumstances, if the company was not being put up for sale,  
4 upon learning that there would be no funding for her in 2005,  
5 we would start a conversation in terms of how -- a  
6 termination.

7 Q Ms. Marcus did continue to work through May 25th, June  
8 25th of '05, correct?

9 A Yes. She -- her formal termination was June 30, 2005.

10 Q Exhibit 56. Could you please identify this?

11 A This is an e-mail from me to Bill Levy, who was, at the  
12 time, the Chief Financial Officer and Jim Cox, who is the  
13 Finance Director and the date of this January 20, 2005. And  
14 what I referred to, to them is that of Stan Silverman's  
15 instruction of no hiring and firing. So that meant that  
16 certain cost centers, where we had people funding people,  
17 that we had actually not budgeted for in 2005, would mean  
18 that those particular cost centers, that's where the CC  
19 numbers stand for, cost center, would go over budget on a  
20 monthly basis and I gave the calculation of what that meant  
21 on a monthly basis.

22 Q And why did you have to account for this?

23 A And the reason that we accounted for this is that we know  
24 that we were carrying people in these particular cost  
25 centers. They were not in the budget that the business were

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1 accounted for and so, those cost centers will go over budget  
2 and then that would flow into the holding company itself.  
3 So, the holding company will carry these particular  
4 department or cost center deficits.

5 Q I'd ask you to turn back to Exhibit 2, please?

6 A Okay.

7 Q The 2005 page. Could you describe for us, from January  
8 through May of 2005, Ms. Marcus remained employed, is that  
9 correct?

10 A That's right.

11 Q And who funded her salary, benefits, overhead, et cetera?

12 A The funding ultimately came through from the holding  
13 company.

14 Q And why was that?

15 A Because there was no budget for her in the Corporate  
16 Development projects and there were no funding from the  
17 business units, themselves, in 2005. And she received the  
18 full salary up until June, 2005. That the only source of  
19 that funding could only come from the holding company,  
20 itself.

21 Q And the holding company also funded CD programs, correct?

22 A That's correct.

23 Q And from that same period, January through May of 2005,  
24 how was Mr. Hinchey's salary and benefits funded?

25 A The same source from the holding company.

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1 Q And how about Mr. Wypart?

2 A The same.

3 Q Mr. Senderov?

4 A Exactly the same.

5 Q When did the actual sale of PQ take place?

6 A Around -- the transaction closed around February of 2005.

7 Q And what was the atmosphere like in R&D in the winter of  
8 '05?

9 A It was cold and it was a period of great uncertainty,  
10 great anxiety. People really naturally asked the question,  
11 do I have a job in the company? And who am I going to be  
12 working for. And so, there was a lot of, you know,  
13 confusion, there was a lot of anxiety. It was not a good  
14 place to work.

15 Q Were you asked to look at the R&D organization after the  
16 sale?

17 A No, I was not.

18 Q Were you involved in looking at the R&D organization from  
19 the prospect of potential downsizing or lay-offs?

20 A I was involved with discussions with different business  
21 units in terms of what comes to mind as an example, Potters  
22 Industry. I was counting on potential funding, say, for  
23 Roman Wypart in 2004, that by the time post-February of 2005,  
24 they were revising their business plans in terms of how to  
25 trim costs and whatever funding that I had accounted for, did

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1 not materialize. Further more to that, is that they, whatever  
2 funding that they had for the people who were within Potters,  
3 as an example, they were cutting your head counts. And so,  
4 within Potters, itself, they were reducing head counts. That  
5 was one. Within Zeolite Products, that was for sure, they  
6 were reducing their budget in product research and  
7 development area. So, there were a lot of conversations, at  
8 that time, between February to May of 2005, that I had with  
9 the different business units, to look at how much money they  
10 were prepared to support for a product development area.

11 Q Did Mr. Wypart have any Corporate Development funding in  
12 2005?

13 A Roman Wypart --

14 Q You can look at your exhibits, if you want.

15 A -- we can't -- we, at the time, had planned on him to  
16 receive 50 percent from Corporate Development and the  
17 remaining 50 percent from Potters.

18 Q Okay. And when you say planned, is that the same as  
19 proposed?

20 A Proposed, yes.

21 Q And what happened to the proposed funding when the  
22 company was sold or announced it was going to be sold?

23 A For really in February to May, there was a period of  
24 reorganization. There was no firm plans, at that point and  
25 by around the middle of May, then we received the decision

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1 that there were going to be no Corporate Development funding.  
2 So, at that point, then we realized that we had to let people  
3 go.

4 Q People continued to be -- get full salaries thought,  
5 until they were let go, correct?

6 A Absolutely, yes. There's no dispute on that.

7 THE COURT: Where did the information come from that  
8 there was going to be no Corporate Development funding? From  
9 the steering committee or what?

10 THE WITNESS: No, the word that I got was actually,  
11 I received that message through from Kevin Doran, through a  
12 voicemail and that was then that he confirmed that that  
13 instruction came from Mike Boyce, that the company was  
14 cancelling the Corporate Development project.

15 Q That's exactly where we were going to go.

16 A Thank you.

17 Q Could you please identify Exhibit 22?

18 A This is a memo that I wrote on May 6, 2005 to Kevin  
19 Doran, our Vice President of Human Resource regarding  
20 reduction in force in 2005.

21 Q Okay, could I ask you just to hold on for a second. For  
22 purposes of us reading it, Colleen, could highlight or  
23 enlarge up to the bottom of that first box, please. I'm  
24 sorry, to interrupt you.

25 A That's okay. And what's here, I'm detailing the



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1 discussion that I had with Michael Imbriani, Colleen  
2 DelMonte, these two individuals are, of course, the heads of  
3 the business for the chemical business. Bob McClune and Bob  
4 Molhall (ph), who are the business managers responsible for  
5 Potters Industries. This is regarding a number of R&D  
6 position based on their particular business needs.

7 And from that, came a list of individuals whom we  
8 did not have funding for and that those positions then, would  
9 be eliminated. So, I list, for instance, Albert Behan, who  
10 is a Senior Research Fellow, Dick Hinchey, Robiana Beagle  
11 (ph), Tom Dang (ph), Larry Royer, Terry Ann Sitlery (ph) and  
12 Mary Ellen Callahan.

13 Q Were you also looking for open positions that people  
14 could potentially fill?

15 A Yes, I was, you know, part of my job then was to look  
16 across the company where, say, one business could not support  
17 an individual, maybe there would be openings in other parts  
18 of the businesses that we can fill them. So, at the time, we  
19 were aware of two open positions. One in silica catalyst and  
20 one in zeolite catalyst. These -- one is a, you know, the  
21 former is a process engineer position and zeolite catalyst,  
22 that is a technician position. And then I had recommended  
23 that the individuals who were going to be displaced, Tom Dang  
24 and Terry Ann, that they be considered for those positions.  
25 And it follows along to say that Mike Boyce -- following Mike

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1 Boyce, who is now then the CEO of the company, that the  
2 Corporate Development would be dealt separately, so we had  
3 not reached a decision regarding funding of the CD program.  
4 And so -- and I listed individuals who could be potentially  
5 be affected by the decision in funding of Corporate  
6 Development.

7 Q Did you expect that a decision regarding the Corporate  
8 Development funding would be made?

9 A I was hoping that it would be soon, at that point.

10 Q Was Ms. Marcus qualified for the Process Engineer II or a  
11 research technician position that was open?

12 A I don't think so. And the salaries certainly would not  
13 match her expectation.

14 Q Does she have an engineering degree?

15 A No, she does not.

16 Q And was Mr. Wypart qualified for the Process Engineer II  
17 or research technician position?

18 A No. Those positions only would pay for, maybe, half of  
19 their salaries.

20 Q Why did you address this memo to Kevin Doran?

21 A At the time, I really wanted to lay out the situation as  
22 I saw them in terms of all of the potential -- what that  
23 meant in the reorganization of the company and what it meant  
24 in terms of in Conshohocken, the individuals that would be  
25 affected by those decisions.

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1 Q 23?

2 THE COURT: Suppose we take a ten-minute recess, at  
3 that point.

4 THE CLERK: All rise.

5 (Court in recess 3:10 to 3:23 o'clock p.m.)

6 BY MS. MALLOY:

7 Q Can you please identify Exhibit 23?

8 A This is a memo that I wrote to Kevin Doran on May 9,  
9 2005. It's like a continuing series on the subject of  
10 reduction in force in 2005.

11 Q At R&D?

12 A At R&D.

13 Q And you reference a discussion with Scott Randolph, who  
14 was he?

15 A Scott Randolph, at this point, is the President of  
16 Potters Industries.

17 Q And could you tell us why you're speaking with Mr.  
18 Randolph?

19 A I was talking in conversation with him regarding the  
20 potential funding of the Potters R&D effort in Conshohocken.  
21 And this was a Saturday weekend that I was sitting in the  
22 parking lot talking with him and I was able to persuade him  
23 to increase his support for his funding. And as a result of  
24 it and that changed some of the positions that was then, you  
25 know, people that we had to lay off.

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1 Q And how did it change from the prior memo?

2 A As an example, we were able to persuade him to retain  
3 Larry Royer, so that, Larry's name then came off the list  
4 itself. Then during this time, too, from between May 6th and  
5 May 9th, a lady by the name of Robiano Beagle, the Chemist I,  
6 she had actually left, announced her resignation and left the  
7 company. She found another job elsewhere. And what else? I  
8 think that was it, the changes.

9 Q Okay. And the parties have stipulated that Larry Royer  
10 was age 55, at the time of the RIF. As of May 9th, when you  
11 wrote this memo, had you heard yet about a Corporate  
12 Development program?

13 A No, at that point, I had not and this note mentioned that  
14 I was to have a meeting with Mike Boyce on the following day,  
15 to discuss Corporate Development.

16 Q And was a decision made about Corporate Development  
17 funding?

18 A Not at this point. Not on May 9th. And I, also, in this  
19 memo, too, at that point, you notice the name Tom Dang and  
20 Terry Ann Sitlery, they were still on the list and at that  
21 point, there were no decisions being made about them by the  
22 different business units to fill the open position. So,  
23 that's why they're still on this list on May 9th.

24 Q Okay. Did you learn that Mr. Boyce had made a decision  
25 about Corporate Development funding?

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1 A On the Monday, late afternoon, May 16, 2005 and this was  
2 through a voicemail that I received from Kevin Doran and  
3 where he told me that Mike Boyce had come to a decision and  
4 that the Corporate Development program was going to be  
5 terminated.

6 Q And what did that mean in terms of personnel?

7 A What that meant was that those people how were relying on  
8 Corporate Development funding, then they would no longer get  
9 that support and if I were not able to find alternate sources  
10 of funding for them, then I would have to let them go.

11 Q And I'm referring you to your manpower matrices, which  
12 are Exhibit 2.

13 A Yes.

14 Q For the year 2004, what was Ms. Marcus' funding from the  
15 Corporate Development programs?

16 A In 2004, it was 50 percent.

17 Q And what happened in 2005?

18 A In 2005, she was not budgeted at all for Corporate  
19 Development funding.

20 Q And how did people continue to get paid?

21 A The only source of that was through the holding company.

22 Q What was Mr. Wypart proposed in 2004 for Corporate  
23 Development funding?

24 A In 2004, Roman was 100 percent and that was the actual  
25 funding that he received through the Corporate Development

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1 program.

2 Q And how was his salary funded for 2005?

3 A In 2005, essentially, all of it came from the holding  
4 company.

5 Q How about Dr. Senderov, how was he funded in 2004?

6 A 2004, he was 100 percent Corporate Development program  
7 and yeah, just confirmed. He was 100 percent.

8 Q And how was Dr. Senderov funded for 2005?

9 A In 2005, at that point, we still did not, you know, have  
10 confirmation of the 2005 program, so, all of his funding came  
11 from the holding company.

12 Q We've heard the name, Al Behan. How was Mr. Behan funded  
13 in the R&D unit?

14 A He, Al Behan worked in Zeolist International and he was  
15 funded through Zeolist International and at different times  
16 in Al Behan from 2002 to 2005, there were small portions of  
17 his funding in the early years.

18 Q Small portions from the Corporate Development funds?

19 A Small portion, yes.

20 Q Did you do anything to try to find other jobs for the  
21 people who might be affected by a Corporate Development  
22 decision?

23 A I worked incredibly hard, tried to turn over every rock,  
24 every nook and cranny, talked to anyone who wanted to listen,  
25 to find funding in this period from February, 2005 to May of

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1 2005.

2 Q Did you tell Ms. Marcus about her -- about the fact that  
3 her employment was going to end?

4 A I -- even as far back as in say, after the September 9th  
5 meeting, September 9, 2004 meeting, with the CD committee, I  
6 had already informed her, at that point, that the projects  
7 were not approved, her employment could be in jeopardy. And  
8 by the time of May 16th, when the formal decision was made by  
9 Mike Boyce to terminate the Corporate Development program, I  
10 called her on the following day. She was at a conference, at  
11 that time, so, I called to inform her and then on the  
12 following Friday, I went to her home, I met with her and her  
13 husband, Mike Bennett and personally delivered the message  
14 that we had eventually lost our funding in Corporate  
15 Development.

16 Q Why did you decide to convey that personally, at her  
17 home?

18 A Bonnie and I have worked very closely on a day to day  
19 basis, really since 2001. I consider her a very good  
20 colleague and I felt that it was the most respectful thing to  
21 do.

22 Q Did you ever have any conversations with Ms. Marcus along  
23 the lines that the company was going to have a lay-off that  
24 would be focused on older workers?

25 A No.

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1 Q Did you ever hear a concern from anybody at PQ, about the  
2 age of the R&D work force?

3 A No.

4 Q Did you remain employed after the lay-off?

5 A Yes, I did.

6 Q Could you tell us about your employment?

7 A Essentially, on the day where we did the lay-offs, I,  
8 too, lost my job as the Vice President of Research and  
9 Development. I was assigned to the Strategic Planning  
10 Department, where I held the title of Vice President of  
11 Strategic Planning. And so, I then reported to a fellow by  
12 the name of Alan McElroy (ph), who had then joined the  
13 company to head the Strategic Planning Department.

14 Q And did you hold any jobs subsequent to that?

15 A Until November of 2006, then I was given a new job as the  
16 Vice President and General Manager of the Catalyst group and  
17 this was a business unit that was reorganized in November of  
18 2006.

19 Q I'm handing you 26. Could you please identify this?

20 A This was a memo that I wrote on May 25, 2005 to Mike  
21 Boyce and Michael Imbriani. This is really -- the title is  
22 Summary of Reduction in Force in R&D, May, 2005.

23 Q Could I excuse you for a second. Could you highlight  
24 from the bottom of the box up? Why did you write this memo?

25 A Well, this happened after the lay-offs and I wanted to



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1 give the senior leadership of the company a summary of the  
2 people who have left the company and what that meant by way  
3 of loss of skills within the company.

4 Q And the first person listed here is Al Behan, was his  
5 employment, in fact, terminated as part of the RIF?

6 A Yes, it was.

7 Q And why was Mr. Behan's employment terminated?

8 A At that point, the work that Al Behan, he's a surface  
9 chemist and the work that he was assigned to have been  
10 completed, at that point and there was no more work to be  
11 done in this area. And so, the Zeolist International, which  
12 is really the cost center that he was in, then eliminated  
13 that position.

14 Q And why was Mr. Hinchey laid off as part of the RIF?

15 A Mr. Hinchey had already, back and as I mentioned before,  
16 in the fourth quarter of 2004 or third quarter of 2004,  
17 sorry, that he had already expressed his intention to retire.  
18 So, he was not budgeted in any particular business nor the  
19 Corporate Development program going into 2005.

20 Q Who or what paid his salary for 2005?

21 A Dick, certainly, up until May, received his full salary  
22 and that money came from the holding company.

23 Q And why was Bonnie Marcus selected as part of the RIF?

24 A Bonnie Marcus was selected for RIF, really, way back in  
25 around the fourth quarter or sometimes, September, 2004. And

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1 really, her termination in May was a direct result of the no  
2 hiring and no firing and the reorganization that was going on  
3 within PQ. And so, this was the result of that the business  
4 did not want to fund her in the Corporate Development area,  
5 because they had their own people to run the projects, as  
6 well as within the business units.

7 Q And how was Ms. Marcus, who paid for her salary and  
8 overhead for the period in 2005 when she worked there?

9 A It all came out of the holding company.

10 Q And why was Dr. Senderov selected for lay-off in the RIF?

11 A And that, also, is the same result as the termination of  
12 the Corporate Development funding, itself. That there was no  
13 other source of funding for Eric that we could find.

14 Q And who was paying Dr. Senderov's salary and overhead for  
15 2005?

16 A The holding company.

17 Q And why was Roman Wypart selected for the lay-off?

18 A Likewise here, the -- although we had proposed for Roman  
19 to be funded from the Corporate Development program, that  
20 money went away in 2005. The other half of Roman's funding  
21 was from Potters Industry. Potters had actually sharply  
22 reduced their funding in research and development and so,  
23 there was no funding for Roman. And so, we actually had to  
24 scramble to find funding for Terry Sitlery and Tom Dang, as a  
25 result of Potters' decision to reduce funding.

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1 Q And who paid for Mr. Wypart's salary and benefits for  
2 2005 while he was working there?

3 A The holding company.

4 Q Who is Erin Fisher?

5 A Erin Fisher, at this time frame, she was promoted to  
6 Chemist I from a technician position, which is the most, sort  
7 of junior in terms of our technical ladder. And she reported  
8 in to Roman Wypart.

9 Q Who paid Ms. Fisher's salary and benefits for 2005?

10 A At this point, it was 100 percent from the holding  
11 company.

12 Q And why was Ms. Fisher not laid off?

13 A At this point, the business decided that in -- go back  
14 one step -- in 2005, the PVC project that Roman and Erin  
15 Fisher had worked on in 2005, was going to be graduated. So,  
16 therefore, they were not targeted to receive funding from  
17 Corporate Development money.

18 Q What does graduated mean?

19 A Graduate means that they would be transferred into the  
20 business units themselves. And at this particular point, the  
21 decision was then made to just simply sell the product and  
22 not do more technical product development work.

23 Q And what product are you talking about?

24 A This is then the Zeolite flooring material, itself, for  
25 going into PVC.

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1 Q PVC, okay and who is Reggie Thompson?

2 A Reggie Thompson is a very senior technician, very  
3 skillful in the pilot front and he -- we were able to find  
4 work for him within Zeolist International.

5 THE COURT: Excuse me, could we see the rest of that  
6 memo enlarged? Thank you.

7 MS. MALLOY: It's actually two pages, we'll do the  
8 bottom there.

9 Q What were you conveying in this part of the memo that's  
10 highlighted, Dr. Lau?

11 A What I was trying to convey now is that with these people  
12 leaving the company, what that meant in terms of the  
13 particular projects that were being funded, you know, back in  
14 '04 and proposed in 2005. As an example, there's outside of  
15 synthesis expertise in Zeolist International, which is  
16 dominant in pressure synthesis, PQ would eliminate most of  
17 its inorganic material synthesis.

18 Q You have to keep your voice up a little bit.

19 A And Zeolite end use. So, I was just trying to highlight  
20 to Mike Boyce and Michael Imbriani the impact of these people  
21 leaving the company.

22 Q Are you familiar with a Corporate Development project  
23 known as MMA?

24 A Yes, I am.

25 Q Did you, in fact, work on that yourself?

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1 A Yes, I did.

2 Q At some point, did MMA move from Corporate Development to  
3 a business unit?

4 A Yes, it did. It was funded up until 2003 and in 2004,  
5 the project moved into silica catalyst itself.

6 Q And you testified earlier about TSPQ?

7 A Yes.

8 Q Could you bring us up to date on what happened with the  
9 TSPQ project between the time it was a Corporate Development  
10 project and the lay-off?

11 A The TSPQ project, in 2004, it had received \$200,000 from  
12 Dow Chemical to support the project itself. And as we go  
13 into 2005 and actually, Bonnie Marcus was deeply involved in  
14 conversation with Dow, regarding potential funding, they were  
15 only able to support us in 2005 to the tune of \$100,000. And  
16 at the time of the lay-off, we lost all of our funding, then  
17 Dow decided to withdraw -- to stop funding, as well. So,  
18 really, the total funding from Dow in 2005, was for half a  
19 year, so that's half of \$100,000, it would be \$50,000.

20 Q Are you familiar with the skills of Phil Connelly?

21 A Very much so.

22 Q And who was Dr. Connelly?

23 A Phil is a -- has a Ph.D. in chemistry and he is a very  
24 analytical, very good math skills, very good with -- at lab  
25 scale work, pilot plant, as well as in the production

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1 environment.

2 Q And what part of R&D did Dr. Connelly work in?

3 A Dr. Connelly worked for Zeolist International primarily  
4 in the synthesis area, in making up stuff -- making of  
5 zeolites.

6 Q Are you familiar with the skills of Bonnie Marcus?

7 A Very much so.

8 Q Do you believe that Ms. Marcus could have filled Mr.  
9 Connolly's role after the lay-off?

10 A I don't think so.

11 Q Why not?

12 A Bonnie Marcus' skill, which we enjoyed having, at the  
13 time, was primarily in how to use zeolites and her skills as  
14 to how to explain to the potential customers how the  
15 material, itself, could work, could benefit in solving  
16 problems for the customer's issue, at the time. So, her  
17 skills was not in the lab nor in the pilot plant nor in the  
18 production environment.

19 (Pause.)

20 Q Could you identify Exhibit 9, please?

21 A Okay, Exhibit 9 is an organization announcement that was  
22 sent out to company-wide on June 16, 2005.

23 Q And does this express the new organization of R&D?

24 A Yes, this is really announced the restructuring of the  
25 research and development organization itself and how the

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1 groups are now restructured and how they are reporting into  
2 the particular businesses and it speaks to then, the  
3 corporate exploratory development projects themselves.

4 Q Okay, hold on for a second. If you look at those bullet  
5 points, Neil Miller is now reporting to Roz Kutchins, is that  
6 correct?

7 A That's right.

8 Q Did he used to report to you?

9 A Yes.

10 Q And would that be the same for Bob Patterson?

11 A That's right.

12 Q And Bill Cormier?

13 A That's right and Ulfrich Senter (ph).

14 Q And after the RIF in May 25th of '05, did the VP of R&D  
15 position exist anymore?

16 A That position was eliminated.

17 Q And what was the reason for that?

18 A I think it's really that of the way that Mike Boyce view  
19 how product development work should be organized. That it  
20 should be deeply embedded within the business units and that  
21 they should take responsibility for it. And instead of a  
22 staff member like a vice president of R&D to take care of it.

23 Q Could you highlight the next paragraph, the Corporate  
24 Development projects?

25 A Now, this indicates that the corporate/exploratory

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1 development projects will not longer be funded by corporate,  
2 therefore, the respective businesses will determine which  
3 aspects of those projects they wish to continue to fund.

4 A Yes.

5 Q Did that, in fact, happen?

6 A Yes, it did and it is really a fellow arm of the  
7 philosophy that the business should take care of their own  
8 product development idea, as reflected in those four bullets  
9 above.

10 THE COURT: I will note that you read it the way it  
11 should have been, but not the way it is. The respective  
12 business it says, not businesses. It should say --

13 MS. MALLOY: Business, correct.

14 THE COURT: -- businesses.

15 MS. MALLOY: Correct, correct.

16 Q Was the funding from the holding company eliminated?

17 A Yes, it was.

18 Q Was the Corporate Development group eliminated?

19 A Yes.

20 THE COURT: Who ran those organizations?

21 THE WITNESS: I was responsible for the Corporate  
22 Development projects.

23 THE COURT: Right.

24 THE WITNESS: So, when the funding went away, the  
25 group went away and I also lost my position, at that point.



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1 THE COURT: What is the holding company, that's just  
2 an accounting term, I understand.

3 THE WITNESS: The holding company ultimately is the  
4 company that -- within, you know, this basket of businesses.  
5 So, all of the business units with the profit and loss  
6 reports into the holding company itself and of course, the  
7 head of that holding company is Mike Boyce, our chief  
8 executive.

9 THE COURT: Does it have any existence other than on  
10 paper?

11 THE WITNESS: I think a certain --

12 THE COURT: Does it have a separate office or  
13 anything like that?

14 THE WITNESS: -- no, it certainly has a meaning in  
15 accounting terms, but it doesn't have any sort of a physical,  
16 you know, is not a physical entity.

17 Q Once the Corporate Development group was eliminated, were  
18 the Corporate Development projects eliminated?

19 A Yes, they were.

20 MS. MALLOY: I have nothing further.

21 THE COURT: Perhaps others do.

22 CROSS-EXAMINATION

23 BY MR. GOLDSHAW:

24 Q When you just testified that, "Bonnie was really selected  
25 for termination back in September of 2004", that's yet

1 another change in the explanation for why she was terminated.

2 THE COURT: Do not argue with the witness, just ask  
3 questions and get answers.

4 Q I'd like you to please look at Exhibit 288, which is the  
5 official explanation for the termination of Bonnie Marcus.  
6 Questions set forth in full detail the reason or reasons why  
7 PQ eliminated Ms. Marcus' position. Isn't it a fact that all  
8 the reasons stated relate to events that happened well after  
9 September of 2004, when you contend that the decision was  
10 made to terminate her?

11 A My answer was that in the normal times and I did say that  
12 those were not normal times, that had the company not been  
13 involved in a transaction, then upon learning that there was  
14 not going to be business support, she would have been  
15 terminated in the fourth quarter of 2004. That was my reply  
16 before.

17 Q Do you agree that the decision to eliminate funding from  
18 the corporate holding company happened long after September,  
19 2004?

20 A Yes, it did and it was the result of the no-hire and  
21 no-fire edict that came from our CEO at the time.

22 Q And would you agree that the business units were then  
23 authorized to determine what any research and development  
24 projects they continued, that was long after September of  
25 2004?

1 A Yes, it was.

2 Q Okay. As to your testimony regarding that several  
3 employees aged 55 or older, such as Bonnie Marcus, Dick  
4 Hinchey, Roman Wypart, Eric Senderov, were all funded through  
5 the holding company. You don't have any actual documents, at  
6 that time, to corroborate that testimony, correct?

7 A Can you repeat that again?

8 Q Yes.

9 THE COURT: You don't know what testimony you're  
10 talking about, the jury doesn't and I don't.

11 Q Okay, would you please recall the testimony you gave  
12 concerning that several employees aged 55 or older were all  
13 funded through the holding company, at the time of their  
14 termination in 2005?

15 A And many of them were funded through, actually starting  
16 in 2001, 2002 --

17 THE COURT: He wants to know whether you have any  
18 documentation that supports that statement.

19 THE WITNESS: Documentation to support, I'm sorry,  
20 I'm not catching this.

21 THE COURT: That captures the assertion that they  
22 were being funded through the holding company.

23 Q Actually, let me try it this way. This document, which  
24 we've already examined you on, P-281, we've been through  
25 analysis where it's you've changed the title to Holding

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1 Company, 2005, according to the testimony you just gave, 100  
2 percent for employees 55 and older.

3 A I don't have any documentation within my, you know,  
4 files. But what I do know is that the -- Bonnie Marcus, Eric  
5 Senderov, Dick Hinchey, et cetera, they were all -- they all  
6 received 100 percent of their salaries and we know that they  
7 were not in the 2005 budget for any of the businesses.

8 THE COURT: So, therefore, they must have been paid  
9 from the holding company?

10 THE WITNESS: Holding company.

11 THE COURT: Okay.

12 Q This point that you're making, that's the same -- the  
13 same point that we discussed before in connection with this,  
14 right?

15 A That's right.

16 Q I won't cover that again. You said that the CD program  
17 never actually received any funding in 2005, correct?

18 A It was never approved.

19 Q Did it actually receive funding in 2005?

20 A The people were paid. We would continue the projects as  
21 if the projects were approved. So, those funding could flow  
22 through from the holding company.

23 Q So, did the CD program actually receive funding in 2005?

24 A I would say for the -- on the approved projects, yes, for  
25 those first few -- five months of the year.

1 Q As a current corporate official of the defendant, are you  
2 trying to shift responsibility for termination decisions away  
3 from Imbriani, Kutchins and Delmonte?

4 MS. MALLOY: Objection, argumentative.

5 THE COURT: It might not be, we haven't heard the  
6 question yet. Go ahead.

7 BY MR. GOLDSHAW:

8 Q I'm asking whether, through your testimony, you were  
9 attempting to take on responsibility for termination  
10 decisions that were really the result of actions by Imbriani,  
11 Kutchins and Delmonte?

12 A In this particular time, there were funding decisions  
13 that were made, not by me, but in terms of how, as a result  
14 of those decisions, how I could keep the people employed,  
15 those remained my decisions. Case in point, for instance, is  
16 that Potters Industry made a funding decision to reduce head  
17 count. As a result of which, Tom Dang, whom we've seen the  
18 name before, Terry Ann Sitlery, whom we've seen the name  
19 before, those people were slated to lose their jobs. And  
20 fortunately, there were other openings within other  
21 businesses and as a result of it, we were successful in being  
22 able to place them. So, those were, I guess and you could  
23 see in the memos, that we have strongly lobbied for them and  
24 eventually were successful in placing them. And Larry Royer  
25 is a particular example, that we were able to change the

1 business people's mind in terms of increasing funding. So,  
2 those responsibilities fell on me and nobody else. So, I  
3 don't know --

4 Q This is what I'm trying to ask. The termination of the  
5 plaintiffs, Bonnie Marcus and Roman Wypart, was really the  
6 doing of actions by Imbriani, Kutchins, Delmonte and not  
7 something that was really within your control, correct?

8 A They made the decision and eventually, really is Mike  
9 Boyce's decision to terminate Corporate Development funding.  
10 That decision flows down to now having lost that funding, who  
11 are the people that now would lose their jobs and that fell  
12 on to my plate.

13 Q Let's try it this way. You didn't have anything to do  
14 with the decision to eliminate funding from corporate holding  
15 company --

16 THE COURT: I'm sorry, but that's rather silly.  
17 You're pointing at something that he can't see and you're  
18 asking him questions? He can't see that.

19 MR. GOLDSHAW: It's right here. He's looking at a  
20 copy right in front of him.

21 THE COURT: No, he's not.

22 THE WITNESS: Which is this?

23 MR. GOLDSHAW: I'm looking at the first sentence of  
24 PQ's official explanation for why PQ eliminated Ms. Marcus'  
25 position. And I'm asking you if you had any involvement in

1 the decisions referenced in the first sentence, which states  
2 PQ decided to eliminate funding from the corporate holding  
3 company, which supported the research and development  
4 conducted by Corporate Development programs, CDP. You  
5 weren't involved in that, at all, right?

6 A I was not involved in terminating the Corporate  
7 Development funding.

8 Q Okay, let's look at the second sentence. The business  
9 units were then authorized to determine what, if any,  
10 research and development projects would continue to be funded  
11 by the business units. You didn't have any involvement in  
12 that, did you?

13 A Well, that's true and out of those business decisions,  
14 there could create openings or loose positions.

15 Q And business units is a reference to people like  
16 Imbriani, Kutchins and Delmonte, correct?

17 A In addition to that, people like Bob Mulhall, Bob  
18 McClune, Scott Randolph.

19 Q In the case of Bonnie Marcus and Roman Wypart, who this  
20 trial is about, the business units would potentially make  
21 decisions that would, in fact, take positions over whether to  
22 fund were Imbriani, Kutchins and Delmonte, correct?

23 A No. As we testified earlier, is that Roman Wypart,  
24 because of his plastic processing skills, we thought he could  
25 potentially get funding from Potters Industries because they

1 have glass beads which goes into polymers. So, I wouldn't  
2 agree with that assertion.

3 Q When you gave sworn deposition testimony previously  
4 regarding Roman Wypart, didn't you say you actually asked Mr.  
5 Imbriani's group, not Potters, about funding his salary?

6 A I think in these memos that I have been referenced, that  
7 I've talked with all of the people involved in the  
8 businesses.

9 Q Let's read from your prior testimony.

10 A Okay.

11 Q Page 135. Tell me when you're there, please?

12 A Yes, I'm here.

13 Q "Question: I guess, more specifically, what I am trying  
14 to determine is whether your answer that Wypart was funded  
15 100 percent with CD funds, was based on your memory or the  
16 document in front of you or a combination of both?

17 "Answer: It certainly based on memory, document  
18 helps me to jog my memory and I, in fact, remember when I was  
19 trying to budget for exploratory for Wypart and the other  
20 half was intended to be funded by the Zeolite Product  
21 business and we know that didn't happen."

22 The Zeolite Product business was within Imbriani's  
23 group, not Potters, correct?

24 A That's correct, but I also have document in front of me  
25 that eventually that we had targeted Roman to be funded by



1 Potters Industries.

2 Q Did you say anything, at all, about Potters Industries  
3 prior to this trial? Prior to this year, within the first  
4 four years after the termination, ever mention anything about  
5 Potters in relation to Roman Wypart?

6 A I'm absolutely sure that document that we presented  
7 today, in terms of the manpower matrix, included Potters.

8 Q Let's focus back on --

9 A Is there a question about whether Potters Industries is  
10 part of PQ?

11 Q My question is whether Potters Industries has anything to  
12 do with the termination of Ms. Marcus and Mr. Wypart, but  
13 we'll return to Mr. Wypart, let's stay with Ms. Marcus for  
14 just a moment longer.

15 THE COURT: It would help if you would enunciate  
16 more clearly what your question is and you can't tell if  
17 you're talking to the witness or yourself, would you please  
18 be specific?

19 MR. GOLDSHAW: Okay, fair enough.

20 Q Were you aware that at the time of the September e-mails  
21 that you testified to upon examination by Ms. Malloy, for Roz  
22 Kutchins, that those e-mails were part of an effort by  
23 Imbriani, Kutchins and Delmonte to reorganize R&D?

24 A No, I was not aware of that.

25 Q Were you aware that Imbriani, Kutchins and Delmonte were

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1 talking about reorganizing R&D and people like Bonnie Marcus  
2 and several of the other older employees in the group, way  
3 back in the fall of 2004?

4 A No, I was not aware of that.

5 Q Were you aware that Kutchins and Delmonte, in January of  
6 2005, before Mr. Boyce was on the scene, prepared a  
7 presentation with proposed organizational charts for your  
8 department for human resources, Kevin Doran?

9 A I was not aware of that and also just to add, too, in the  
10 period around middle of December, 2004 --

11 Q Does this relate to my question?

12 THE COURT: Let him finish.

13 THE WITNESS: -- in the period of December, the  
14 middle of December, 2004 to when the deal or when the  
15 transaction actually closed on February, 2005, we already  
16 knew that Stan Silverman would be stepping down as the CEO  
17 and that Mike Boyce would be the new CEO after close. I just  
18 want to clarify that. So, at that particular transition  
19 period, there was, you could call it, you know, there was  
20 really no one in charge.

21 Q I'm sorry, please explain how that related to the  
22 question I was asking you, so I can understand?

23 A I'm just trying to point out that, at that particular  
24 moment in time, we have lame duck CEO in office and I don't  
25 know whether the organization plans, how that is particularly

1 meaningful.

2 THE COURT: Explaining why he was not aware of the  
3 plan to reorganize R&D.

4 Q I'm correct that any decision to cancel the detergent  
5 zeolite's funding for Bonnie Marcus, whether it be made in  
6 the fall of 2004 or in 2005, would have been made by  
7 Imbriani, Kutchins and Delmonte, not you, correct?

8 A They would decide which level of funding to support, yes.

9 Q And so, if her funding for detergent zeolites was  
10 cancelled, it would have been their decisions, not yours?

11 A Yes.

12 Q In talking about the funding that you were able to get  
13 for Larry Royer, age 55?

14 A Yes.

15 Q Who was not, in fact, terminated, it was Potters that  
16 gave Larry Royer, age 55, money at that time, correct?

17 A As part of the PQ business, yes.

18 Q The decision to fund Larry Royer, age 55, had nothing to  
19 do with Imbriani, Kutchins, Delmonte, did it?

20 A Well, we -- I could tell you that in my conversation with  
21 Scott Randolph, the conversation about was how to provide  
22 technical support for the business and that Larry Royer would  
23 be very suitable. His age never came into the conversation.  
24 So, we never mentioned Larry Royer as age 55, please increase  
25 funding.

1 Q My question is whether in getting money for Larry Royer,  
2 so that he is not fired, did Imbriani, Kutchins or Delmonte  
3 given any money?

4 A No, they did not. But in enabling Tom Dang to take up  
5 the process engineer position in silica catalyst, that  
6 business unit reported up to Colleen Delmonte and Michael  
7 Imbriani.

8 Q At the time Imbriani, Kutchins and Delmonte recommended  
9 the termination of Eric Senderov, Dow hadn't pulled the  
10 funding yet for TSPQ that he was working on, am I correct?

11 A It was at a much reduced level, as I've mentioned before.  
12 Instead of \$200,000 in 2004, it was only \$100,000 in 2005.

13 Q My question is when they pulled or reduced their funding?  
14 That was after the point that Imbriani, Kutchins and Delmonte  
15 had already recommended his termination, correct?

16 MS. MALLOY: The witness already said he has no  
17 recollection of this. He has no knowledge of it.

18 THE COURT: Well, let the witness answer the  
19 question. He can answer it again.

20 THE WITNESS: Well, the chain of events is that we  
21 cancel the Corporate Development program. That meant that we  
22 couldn't support this individual in part or whole. And as a  
23 result of this, we communicated the decision to terminate the  
24 Corporate Development program to Dow. Then they terminated  
25 the funding, knowing that they could not support a whole

1 person and so -- and unless people are willing to work for a  
2 fraction of their salary, there was no way to continue  
3 funding the project.

4 BY MR. GOLDSHAW:

5 Q Let's try it this way. At the time Eric Senderov was  
6 recommended for termination by Imbriani, Kutchins and  
7 Delmonte, on May 16, 2005, he was, from PQ's perspective, a  
8 half-priced employee, right? Because half the money for him  
9 came from an outside company?

10 A Yes.

11 Q Because you mentioned Tom Dang, I would like the record  
12 to reflect the parties have stipulated that he was 34 at the  
13 time of the reduction in force.

14 A And he also only worked at half the rate that Bonnie  
15 Marcus did.

16 Q PQ has never contended that Bonnie Marcus' salary had  
17 anything to do with her termination, does it?

18 A I'm just trying to clarify that those are very different  
19 decisions.

20 Q Okay, so, your comment had nothing to do with the reasons  
21 for her termination, we agree on that?

22 A I agree on that, I'm just --

23 Q Okay.

24 A -- trying to point out that, you know, because the  
25 question was asked --

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1 THE COURT: Okay, wait for another question, if any.

2 MR. GOLDSHAW: Okay.

3 Q Would you agree that prior to the reduction in force,  
4 your level of interaction with the new CEO, Michael Boyce,  
5 was very little?

6 A Very little.

7 Q And your very first opportunity for a one on one  
8 conversation with the new CEO, Michael Boyce, wasn't until  
9 just two weeks before the RIF, right?

10 A That's right.

11 Q And the first time you met with him, Michael Boyce, you  
12 found out that he had already decided to remove you from your  
13 position as the head of R&D, right?

14 A The first time I met with Mike Boyce was in January of  
15 2005 and it was in a meeting with several people. I remember  
16 definitely Scott Randolph and that was to give him an  
17 introduction of R&D in Conshohocken and to lay out the  
18 program, different programs that we had. And subsequent to  
19 that, there were different staff meetings, maybe one or two  
20 staff meetings and then the only one on one meeting that I  
21 had with Mike Boyce was on May the 11th of 2005.

22 Q And my question is, when you had that first one on one  
23 meeting with Michael Boyce, after his arrival, it was just  
24 two weeks before the reduction in force, right?

25 A Yes.

1 Q And the very first time you met with him, you found out  
2 that he had decided to remove you from your position as head  
3 of R&D, correct?

4 A No, he asked me what I wanted to do with myself. He had  
5 not told me that, at that point, that he had already made up  
6 his mind to eliminate the vice president of R&D.

7 THE COURT: He asked that question, did you think  
8 maybe that was a possibility?

9 THE WITNESS: It was certainly a possibility. At  
10 that point, as I mentioned before, there was certainly a lot  
11 of anxiety, a lot of uncertainties.

12 Q When Mr. Boyce asked you what you wanted to do in the  
13 company going forward, in your first one on one meeting, you  
14 had no concept that your position would be eliminated at that  
15 time, right?

16 A I went into that meeting, I had a very big presentation  
17 with me, at the time, on Corporate Development projects. My  
18 intention of this one on one meeting, was to tell him all the  
19 wonderful things that we were doing in Corporate Development  
20 projects and that he ought to continue funding. And that was  
21 my original understanding going into the meeting itself.

22 Q My question was when you met with him for the first time,  
23 you had no concept that your position would be eliminated,  
24 right?

25 A That's right.

1 Q Were you aware, at the time, in May of 2005, that Roz  
2 Kutchins, Colleen Delmonte had submitted a written  
3 recommendation to Michael Boyce to reorganize your  
4 department?

5 A I was not aware of that.

6 Q Were you aware in May of 2005, that Imbriani, Kutchins  
7 and Delmonte were recommending the termination of several  
8 older employees in your department?

9 A I was not aware of that.

10 Q During the RIF process, nobody asked you for your  
11 opinions as to these recommendations by Imbriani, Kutchins,  
12 Delmonte to terminate several older workers in your  
13 department, correct?

14 A I don't know that they were recommending older workers  
15 for elimination.

16 THE COURT: But, at least, nobody asked your input?

17 THE WITNESS: Nobody asked my input. But I knew  
18 that if the funding were terminated, that certain people  
19 would be affected.

20 Q Wouldn't it have surprised you, at the time, to learn  
21 that Imbriani, Kutchins and Delmonte had submitted a written  
22 recommendation to terminate employees in your department to  
23 restructure it?

24 A I guess I would be surprised and would be put out by it.

25 Q It was Imbriani, Kutchins and Delmonte who made the



1 decision, after the elimination of the Corporate Development  
2 program, not to fund Bonnie Marcus in the chemicals division,  
3 correct?

4 A You have to repeat, I just want to make sure of the  
5 sequence of events here.

6 Q It was Imbriani, Kutchins and Delmonte who made the  
7 decision not to fund Bonnie Marcus, following the reduction  
8 in force, in the chemicals division, correct?

9 A They had already made up their mind in terms of support,  
10 back in 2004 -- fourth quarter, 2004 -- in terms of the  
11 zeolite product development funding and the CD funding, which  
12 they felt could be supported internally with their business  
13 managers.

14 Q So, at some point, you learned that the funding that you  
15 had to use when the Corporate Development was eliminated,  
16 right?

17 A Yes.

18 Q And the funding that was not eliminated, in the chemicals  
19 division, was money controlled by Imbriani, Kutchins,  
20 Delmonte, correct?

21 A Sure, yes.

22 Q And so, the decision not to use that money available in  
23 the chemicals division to fund Bonnie Marcus, was made by  
24 Imbriani, Kutchins, Delmonte, right?

25 A Well, the -- I think you have to separate between the

1 decision on funding as to who is going to be using that money  
2 and how -- which project that they work on. Those are  
3 separate decisions.

4 Q When funding was found for the 35 year old Erin Fisher,  
5 following the reduction in force, it was Imbriani, Kutchins  
6 and Delmonte who chose to give her that money, right?

7 A I'm quite positive that Michael Imbriani does not know  
8 who Erin Fisher is.

9 Q Not my question.

10 A But it relates to there is a separation between funding  
11 and who is going to work on what.

12 Q I'm not asking who is going to work on what. I'm asking  
13 about whose employment was saved and who was fired. Erin  
14 Fisher, 35, was not fired, correct?

15 A Erin Fisher, as we mentioned, the business decided to  
16 simply terminate product development work, which required a  
17 more senior person to do and that they were only willing to  
18 continue selling the product and provide cursory customer  
19 support as necessary.

20 THE COURT: And you do agree she was not fired?

21 THE WITNESS: I agree that she was not fired.

22 THE COURT: Just listen to the question and answer  
23 the question.

24 Q And after the reduction in force, the money that was used  
25 to pay for her salary came out of the budgets of Imbriani,

1 Kutchins, Delmonte?

2 A Sure.

3 Q Correct?

4 A Yes.

5 Q And would you agree that following the reduction in  
6 force, if Imbriani, Kutchins, Delmonte also chose to fund  
7 Bonnie Marcus, she would not have been fired?

8 A They had already made that decision much earlier than  
9 that.

10 Q That's not my question.

11 THE COURT: If they had decided, if they changed  
12 their mind and decided to fund her, she would not have been  
13 fired?

14 THE WITNESS: True. If that money was available,  
15 but she was not their -- she was not chosen to do that job.  
16 They felt that they had other people to it.

17 Q When you say she was not chosen, you mean she wasn't  
18 chosen by Imbriani, Kutchins, Delmonte, correct?

19 A In terms of the work force that they had, at the time,  
20 that they felt they had adequate support.

21 THE COURT: I think we've chewed this over enough.  
22 We're going to recess in about ten minutes. So, why don't  
23 you finish up.

24 Q You had no involvement in the decision to choose Ed  
25 Myszak instead of Bonnie Marcus for the zeolite R&D

1 management position that was created at the time of the RIF,  
2 correct?

3 A Correct.

4 Q And that decision was made by Roz Kutchins, Colleen  
5 Delmonte?

6 A Certainly. At that point, post-RIF, I had already  
7 essentially, took a different role. I lost my job as the  
8 head of R&D, so I had no decision there.

9 Q Isn't it true that all of the documents that you reviewed  
10 with Ms. Malloy, during her questioning of you, that none of  
11 them you actually recommended termination for Bonnie Marcus  
12 or Roman Wypart? In any of those documents, correct?

13 A Can you repeat this again?

14 Q Yes.

15 THE COURT: It's hard to say. He wants to know  
16 whether in any of these documents that have been floating  
17 about here, did you recommend that Bonnie Marcus be fired?

18 THE WITNESS: Bonnie Marcus lost her support of  
19 funding back in the fourth quarter.

20 THE COURT: We understand that, yes.

21 Q I'm asking is there a document where you recommend either  
22 of the plaintiffs -- withdrawn. Is there, in fact, an actual  
23 document where you, as opposed to Imbriani, Kutchins,  
24 Delmonte, actually recommended termination of either of the  
25 plaintiffs?

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1 A There's not a recommendation. The only recommendation  
2 that I always made is to support the Corporate Development  
3 funding. And but what I do say is that as a result of the  
4 Corporate Development project losing its funding, these are  
5 the people who would be affected.

6 THE COURT: We understand that for the 17th time.

7 THE WITNESS: Yes.

8 MR. GOLDSHAW: I'm close to done, your Honor.

9 THE COURT: Pardon?

10 MR. GOLDSHAW: I wasn't sure if you were going to  
11 ask me, I'm getting close to finished.

12 THE COURT: Finish up, please.

13 Q I'd like to ask you a question about an exhibit --

14 THE COURT: Just go ahead and ask it, don't tell him  
15 in advance.

16 MR. GOLDSHAW: P-32, which I am displaying.

17 THE COURT: Your displaying it to the jury, he can't  
18 see it.

19 MR. GOLDSHAW: It should be before you.

20 THE WITNESS: Which one is this?

21 Q P-32 is the memorandum, dated May 16, 2005, from Colleen  
22 Delmonte, Roz Kutchins, addressed to Michael Boyce and  
23 Michael Imbriani.

24 (Pause.)

25 THE COURT: Can you get on the record whose

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1 memorandum it is, who wrote it and to whom it was addressed?

2 MR. GOLDSHAW: Yes, memorandum dated May 16, 2005,  
3 from Colleen Delmonte, Rosalind Kutchins to Michael Boyce and  
4 Michael Imbriani, subject, R&D organization. This is the  
5 exhibit with the table recommending the termination of the  
6 plaintiffs and others.

7 Q Have you found it?

8 A It's P-35?

9 Q Two, P-32.

10 A 32, sorry.

11 THE COURT: What's your question?

12 Q The first time you ever actually saw this memorandum was  
13 three years after the reduction in force, correct?

14 A Yes, that's right.

15 Q In hindsight, wouldn't you agree that you simply did not  
16 have that much influence over the RIF that took place in R&D?

17 A In hindsight, I would say that, at the time, there was a  
18 great deal of uncertainty going through this reorganization.  
19 Certainly, I would, you know, say that different people were  
20 doing different things and not necessarily coordinated. And  
21 certainly, I read this way after the event, I agree with  
22 that.

23 Q Would you agree, in hindsight, my question is about your  
24 level of influence as opposed to Kutchins, Delmonte,  
25 Imbriani's level of influence?

1 THE COURT: May I inquire what on earth is the  
2 relevance of his degree of involvement? He's not a party to  
3 the action.

4 MR. GOLDSHAW: He's not, our contention is that  
5 Imbriani, Kutchins and Delmonte had a discriminatory motive  
6 in recommending their termination --

7 THE COURT: Well --

8 MR. GOLDSHAW: -- and that's what got them fired.  
9 That's why it's important to establish that they are the ones  
10 that --

11 THE COURT: Well, you've nailed that down a dozen  
12 times.

13 MR. GOLDSHAW: Well, I --

14 THE WITNESS: All I could tell you is that --

15 MR. GOLDSHAW: Wrapping it up, wrapping it up.

16 THE WITNESS: -- there were a number of people that  
17 we had -- that had lost their funding, not just the  
18 plaintiffs here, but other people like Tom Dang and  
19 potentially, Larry Royer and Terry Ann Sitlery and I was able  
20 to place some of them in different new jobs and others, I  
21 could not and you know, it's a difficult decision. We don't  
22 like lay-offs, but ultimately, when you lose the funding,  
23 that's what happens.

24 Q I'm just going to wrap this up by reading from your sworn  
25 deposition.

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1 THE COURT: Go right ahead.

2 MR. GOLDSHAW: It's page 359. Do you still have it  
3 up there?

4 THE COURT: Read from it whether he has it or not.

5 MR. GOLDSHAW: Okay.

6 THE WITNESS: No, I don't.

7 Q This is from your sworn deposition in --

8 A Oh, the 20-hour marathon that I went through, huh.

9 Q -- September 11, 2008.

10 "Question: Does this document cause you to believe  
11 that you may not have had as much influence as to what  
12 actually happened in R&D as part of the May, 2005 RIF, as you  
13 once thought you did?

14 "Answer: In hindsight, certainly, I come to the  
15 conclusion that I did not have that much influence."

16 A And if I had more influence --

17 MR. GOLDSHAW: I have no other questions.

18 THE WITNESS: -- and if I had more influence, I  
19 would have loved to have saved their jobs.

20 Q You're not the ones that wanted to get rid of the older  
21 employees in your department, right? It was Imbriani,  
22 Kutchins, Delmonte?

23 A I really want to make something very clear in that. In  
24 the research organization, we actually value people with  
25 experience and because they have been more seasoned, they've



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1 had time to solve problems and so on. And to us, you know,  
2 employees with experience are extremely valuable.

3 THE COURT: Okay, we don't want more speeches.

4 Q Okay and for clarification, when you say we and us,  
5 you're talking about people like you, not Imbriani, Kutchins,  
6 Delmonte?

7 A I think I said company, we value people with experience.

8 THE COURT: May I inquire, earlier there was a memo  
9 that you wrote to, I believe, the new president, summarizing  
10 the impact that would result from the proposed RIF for firing  
11 people?

12 THE WITNESS: That's right.

13 THE COURT: Either in that memo or at any other  
14 time, did you or anyone else, to your knowledge, call the new  
15 president's attention to the age problem, the fact that the  
16 RIF involved so many people that were over 55?

17 THE WITNESS: At the time, I, for one, had never  
18 considered age to be an issue. We looked at it purely from a  
19 funding perspective. So, that was not in my consideration.

20 THE COURT: And you don't know that anybody else  
21 ever raised that?

22 THE WITNESS: No, I don't know.

23 THE COURT: Thank you. Anything further that  
24 anybody insists on asking today?

25 MS. MALLOY: No, your Honor.

Lau - Cross

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1                   THE COURT: Recess until tomorrow morning. Members  
2 of the jury, I hope you have a safe and reasonably prompt  
3 trip home. It took me twice as long as usual yesterday. I  
4 hope it's better today. Recess until 10:00 o'clock tomorrow  
5 morning.

6                   THE CLERK: All rise.

7                   (Court adjourned 4:22 o'clock p.m.)

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I N D E X

<u>PLAINTIFF'S WITNESSES</u>	<u>D</u>	<u>C</u>	<u>RD</u>	<u>RC</u>
Dr. Stephanie Thomas				
By Ms. Eyer	2		31	
By Mr. Ennis		16		
Michael Bennett				
By Mr. Goldshaw	32			
By Ms. Malloy		36		
Andrew Verzilli				
By Ms. Eyer	39			
By Mr. Ennis		55		
Edward Myszak				
By Mr. Goldshaw	61			
John Lau				
By Mr. Goldshaw	68			
<u>DEFENSE WITNESSES</u>				
John Lau				
By Ms. Malloy	111			
By Mr. Goldshaw		161		
		- - -		
<u>PLAINTIFF'S EXHIBITS</u>				<u>RECEIVED IN EVIDENCE</u>
P-227 and 228				54
		- - -		

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Geraldine C. Laws, CET  
Laws Transcription Service

Dated 12/14/09